

1 UNITED STATES DISTRICT COURT

2 NORTHERN DISTRICT OF OHIO

3 EASTERN DIVISION

4
5 HODELL-NATCO INDUSTRIES, INC.,)

6 Plaintiff,)

7 v.)

Case No. 1:08-CV-02755

8 SAP AMERICA, INC., et al.,)

9 Defendants.)

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13
14 VIDEOTAPED/VIDEOCONFERENCE DEPOSITION OF

15 UDI ZIV

16 TEL AVIV, ISRAEL

17 JUNE 25, 2012

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25 REPORTED BY: BRENDA MATZOV, CA CSR NO. 9243

JUNE 25, 2012 - UDI ZIV

1 Videotaped/videoconference deposition of UDI
2 ZIV, taken in the above-entitled cause pending in the
3 United States District Court, for the Northern District
4 of Ohio, Eastern Division, pursuant to notice, before
5 BRENDA MATZOV, CA CSR 9243, at Gross, Kleinhendler,
6 Hodak, Halevy, Greenberg & Co., 1 Azrieli Center, Round
7 Tower, 39th Floor, Tel Aviv, Israel (and simultaneously
8 in Cleveland, Ohio and Philadelphia, Pennsylvania), on
9 Monday, the 25th day of June, 2012, at 5:18 p.m.

10
11
12 APPEARANCES:

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11 KEVIN REIDL, Hodell-Natco (in Ohio)

12 WILLIAM REX, Hodell-Natco (in Ohio)

I N D E X

WITNESS

Udi Ziv

EXAMINATION

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9

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E X H I B I T S

NUMBER

DESCRIPTION

MARKED

Exhibit 240

Document from SAP Entitled "SAP
Business One 'Sweet Spot' Overview
for Partners," Undated
(No Bates Number)

28

Exhibit 241

E-mail from Gilad Gruber to Udi
Ziv, Dated April 18, 2005, Subject:
"Dev 2005 Checkpoint 28-3.ppt"
and Related Printout of PowerPoint
Presentation Entitled "2005
Development Checkpoint," Dated
March 28, 2005
(Bates SAP00013221 to 13237)

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Exhibit 242

Printout of PowerPoint Presentation
from SAP Entitled "Update on B1
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| 3 | Exhibit 243 | Printout of PowerPoint Presentation | |
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| 7 | | from SAP Entitled "B1 Performance | |
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| 9 | Exhibit 245 | E-mail from Daniel Kraus to Udi | |
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| 11 | | "RE: Dan Lowery - Hodell-Natco" | |
| | | and Related E-mail String | |
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| 12 | Exhibit 246 | E-mail from Geoffrey Ashley to | |
| 13 | | Ralf Mehnert-Meland and Others, | |
| 14 | | Dated April 16, 2007, Subject: | |
| 15 | | "RE: Dan Lowery - Performance | |
| | | Issues at Hodell-Natco" and | |
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| 16 | Exhibit 247 | E-mail from Udi Ziv to Daniel Kraus | |
| 17 | | and Others, Dated April 25, 2007, | |
| 18 | | Subject: "FW: Dan Lowery - Fw: | |
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| Exhibit 251 | E-mail from Gadi Shamia to Udi Ziv, Dated March 13, 2006, Subject: "FW: Slides for Conference Call," and Related E-mail String and Attachment (Bates SAP00013192 to 13195) | 136 |

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| Exhibit 69 | E-mail from Michael Sotnick to Daniel Kraus and Others, Dated April 12, 2007, Subject: "RE: Dan Lowery - Hodell-Natco" and Related E-mail String (Bates SAP00005570 to 5574) | 86 |
| Exhibit 70 | E-mail from Elliott Ross to Daniel Kraus and Others, Dated April 13, 2007, Subject: "RE: Dan Lowery - 2nd SOS from Partner for Help" and Related E-mail String (Bates SAP00002669 to 2670) | 163 |
| Exhibit 77 | E-mail from Udi Ziv to Daniel Kraus and Others, Dated April 15, 2007, Subject: "RE: Dan Lowery - 2nd SOS from Partner for Help" and Related E-mail String (Bates SAP00004609 to 4613) | 106 |

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| Exhibit 79 | E-mail from Dan Lowery to Daniel Kraus and Others, Dated April 16, 2007, Subject: "Dan Lowery - Hodell Performance" and Related E-mail String (Bates SAP00000910 to 0918) | 122 |
| Exhibit 119 | Printout of PowerPoint Presentation from SAP Entitled "Sizing Transaction Volumes," Dated July 17, 2006 (No Bates Number) | 152 |
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| Exhibit 129 | Document from SAP Entitled "Statement of Direction, SAP Business One 2006," Dated March 2006 (No Bates Number) | 147 |
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Q U E S T I O N S I N S T R U C T E D

N O T T O A N S W E R

(None.)

P R O C E E D I N G S

THE VIDEOGRAPHER: This is the beginning of Tape 1 in the video deposition of Udi Ziv, being held at the Gross Kleinhendler law office, Tel Aviv, Israel. This deposition is being taken on June 25th, 2012, at 5:18 p.m., in the matter of Hodell-Natco Industries, Inc., versus SAP America, Inc., et al., Case No. 1:08-CV-02755, being heard in the United States District Court, Northern District of Ohio, Eastern Division.

The court reporter is Brenda Matzov, the videographer is Doron Matzov, both from Israel Deposition Services.

Would counsel please state their appearances.

MR. LAMBERT: Wes Lambert, on behalf of Hodell-Natco.

MR. HULME: Roy Hulme, H-u-l-m-e, on behalf of LSI-Lowery and IBIS.

MR. STAR: Greg Star and Joe Kelleher, on behalf of SAP America and SAP AG.

THE VIDEOGRAPHER: Would the court reporter please swear in the witness.

//

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1 UDI ZIV,
2 called as a witness, being first duly
3 sworn, was examined and testified as
4 hereinafter set forth:
5

6 EXAMINATION

7 BY MR. LAMBERT:

17:20:35 8 Q. Good evening, Mr. Ziv. My name is Wes
17:20:41 9 Lambert. We haven't formally met, but I represent
17:20:43 10 Hodell-Natco Industries in its lawsuit against SAP
17:20:48 11 America and SAP AG.

17:20:50 12 Are you familiar with this case?

17:20:52 13 A. Yes.

17:20:54 14 Q. Okay. Can you hear me all right?

17:20:56 15 A. Yes, I can.

17:20:58 16 Q. Okay. Have you ever had your deposition
17:21:01 17 taken before?

17:21:01 18 A. No.

17:21:04 19 Q. You have not?

17:21:05 20 A. No.

17:21:07 21 Q. Okay. I'm going to ask you a series of
17:21:10 22 questions. It's going to be -- my questions and your
17:21:12 23 answers are going to be recorded by the stenographer
17:21:16 24 that's sitting to your right [sic]. And it's also
17:21:18 25 being recorded by videotape.

17:21:20 1 A. Uh-huh.

17:21:21 2 Q. You're under oath, as you would be in court.

17:21:23 3 Please give me an opportunity to finish my question
17:21:27 4 before you answer so that everything can be taken down
17:21:30 5 clearly. If you don't understand any of my questions,
17:21:32 6 please let me know, and I will attempt to make it
17:21:37 7 more clear. Otherwise, I'm going to presume that
17:21:39 8 you understood my question when you answered it.

17:21:42 9 And we'll -- we'll try to go relatively
17:21:46 10 quickly since I know it's getting late there. If you --
17:21:47 11 but if you need a break at any time, please let me know,
17:21:52 12 and we'll certainly do so.

17:21:55 13 Is that okay?

17:21:56 14 A. Yeah. Sounds good.

17:21:58 15 Q. Okay. What did you do to prepare for giving
17:22:00 16 your testimony today?

17:22:03 17 A. I had a call -- a single call with the --
17:22:05 18 SAP America's lawyers. They're sitting on the other
17:22:09 19 side of the video.

17:22:12 20 Q. Okay. Did you review any documents?

17:22:15 21 A. Yeah. I did see some documents during the
17:22:18 22 call.

17:22:18 23 Q. Okay. Are you being represented by SAP --
17:22:20 24 are you being represented by Mr. Star and -- and the
17:22:25 25 Drinker Biddle firm in this deposition?

17:22:26 1 A. Correct.

17:22:35 2 Q. Have you spoken with anyone currently or
17:22:37 3 formerly employed with SAP with regard to this lawsuit?

17:22:41 4 A. No.

17:22:46 5 Q. Are you familiar with the name LSI-Lowery
17:22:48 6 Systems?

17:22:50 7 A. Only from reading the -- few of the documents
17:22:53 8 that were sent to me.

17:22:56 9 Q. Okay. Are you aware that they're the SAP
17:22:59 10 business partner that sold Business One to Hodel-Natco?

17:23:03 11 A. Yes, I am.

17:23:07 12 Q. Okay. Have you had any communications with
17:23:08 13 anyone at LSI regarding this lawsuit?

17:23:11 14 A. Not that I recall.

17:23:14 15 Q. Okay. Have you had any communications with
17:23:16 16 anyone else regarding the lawsuit?

17:23:18 17 A. No.

17:23:22 18 Q. Who are you currently employed by?

17:23:23 19 A. A company called Nice Systems.

17:23:29 20 Q. What do you do with Nice Systems?

17:23:30 21 A. I'm the president of the Enterprise Group
17:23:35 22 at Nice.

17:23:39 23 Q. Can you just give me a summary of your --
17:23:41 24 your job duties and responsibilities?

17:23:43 25 A. My current job?

17:23:46 1 Q. Yes.

17:23:49 2 A. Nice is built out of three divisions or
17:23:51 3 groups. I'm responsible for one of them, which is
17:23:54 4 selling to -- mainly to contact centers and trading
17:23:58 5 floors, mainly voice recording systems, speech analytic
17:24:02 6 systems, workforce management, workforce optimization,
17:24:06 7 and other similar systems. I'm responsible for
17:24:08 8 strategy, products. That's basically it.

17:24:14 9 Q. Are you a shareholder at Nice?

17:24:17 10 A. Only via employee options.

17:24:21 11 Q. Okay. Who did you work for prior to Nice?

17:24:30 12 A. I was a -- long history. Top Tier Software,
17:24:36 13 which was acquired by SAP in 2001. And then for SAP
17:24:41 14 until 2007. I was self-employed for about a year and
17:24:48 15 a half and then joined Nice on [sic] November of '08.

17:24:56 16 Q. What part of -- what month in 2007 did you
17:25:03 17 leave SAP?

17:25:07 18 A. I think my employ -- employment ended on [sic]
17:25:10 19 October, if I recall correctly. I left my position
17:25:14 20 a few months before. I don't recall exactly the date.

17:25:25 21 Q. What was your -- your position with SAP while
17:25:28 22 you were there?

17:25:31 23 A. I had two roles, basically. One was
17:25:32 24 the general manager of SAP Labs in Israel, which is
17:25:39 25 a development or R&D lab for SAP. And the other is

17:25:43 1 the general manager of what was called Small Business
17:25:48 2 Solutions for SAP. The latter was I think since 2004,
17:25:55 3 if I recall correctly, until 2007. I'm not sure about
17:26:00 4 the dates.

17:26:07 5 Q. And I'm sorry. Who did you work for prior
17:26:09 6 to SAP?

17:26:11 7 A. All the way from beginning of history? Top
17:26:13 8 Tier Software from --

17:26:15 9 Q. No.

17:26:15 10 A. No? Just before?

17:26:16 11 Q. Just immediately prior.

17:26:18 12 A. Prior to SAP? Top Tier Soft --

17:26:21 13 Q. Yeah.

17:26:22 14 A. Top Tier Software, which was acquired by SAP.

17:26:25 15 Q. Top --

17:26:25 16 A. Top Tier.

17:26:25 17 Q. Okay.

17:26:26 18 A. T-o-p, T-i-e-r.

17:26:28 19 Q. Is that the same company -- I've seen the
17:26:35 20 name TopManage software.

17:26:37 21 Is that the same thing?

17:26:37 22 A. No. Different company.

17:26:39 23 Q. What's TopManage?

17:26:42 24 A. TopManage --

17:26:42 25 Q. What is TopManage?

17:26:43 1 A. TopManage was a company SAP acquired -- I
17:26:46 2 don't recall when -- after 2001 for sure, which was --
17:26:51 3 the main product of that company was called Menahel,
17:26:56 4 which is -- turned to be business -- SAP Business
17:27:02 5 One after the acquisition.

17:27:05 6 Q. Okay. Did you have any participation or
17:27:11 7 involvement in the sale of -- of TopManage to SAP
17:27:15 8 business -- or SAP?

17:27:16 9 A. No.

17:27:19 10 Q. Were you employed by SAP when it was -- when
17:27:23 11 TopManage was acquired by SAP?

17:27:25 12 A. Yes, I was.

17:27:29 13 Q. Did you have any role in reviewing the --
17:27:32 14 what was the name -- strike that.

17:27:34 15 What was the name of the software -- of SAP
17:27:37 16 Business One prior to its acquisition by SAP?

17:27:41 17 A. The Hebrew name was Menahel. I don't know
17:27:45 18 how to spell it in -- M-e-n-a -- M-e-n-a-h-e-l, I guess.
17:27:51 19 I think the English name was TopManage, but I'm not
17:27:54 20 sure.

17:27:59 21 Q. Okay. And did you have any role in reviewing
17:28:03 22 the TopManage software when it was being acquired by
17:28:07 23 SAP?

17:28:08 24 A. I don't recall that I did.

17:28:13 25 Q. Do you know why SAP wanted to buy TopManage?

17:28:20 1 A. Basically to get into the small business
17:28:23 2 solutions business.

17:28:30 3 Q. They didn't have a product offering in that --
17:28:33 4 in that market segment at the time?

17:28:37 5 A. Not that I know of. No.

17:28:44 6 Q. Would you agree with me that, when TopManage
17:28:47 7 was acquired by SAP, it was only looked at as an interim
17:28:52 8 solution that would ultimately be replaced by another
17:28:57 9 product?

17:28:58 10 A. I don't know.

17:28:58 11 Q. You don't have any knowledge in that regard?

17:29:01 12 A. No, I don't.

17:29:05 13 Q. Do you have an opinion as to whether TopManage
17:29:09 14 and what ultimately became Business One was expected
17:29:12 15 to be a long-term solution in that market segment for
17:29:18 16 SAP?

17:29:19 17 A. I -- I don't have any knowledge of what was
17:29:21 18 the intent in the acquisition. I know for a fact that
17:29:27 19 it was -- the product was carried on. So -- but these
17:29:30 20 are facts. I don't know what was the intention.

17:29:43 21 Q. Do you know anything about the -- the capacity
17:29:47 22 of the TopManage software at the time it was acquired
17:29:52 23 by SAP?

17:29:58 24 MR. STAR: Objection to form.

17:29:58 25 You can go ahead and answer.

17:29:58 1 (Court reporter clarification.)

17:30:03 2 THE WITNESS: I -- I didn't hear, Greg, what

17:30:04 3 you said. Sorry.

17:30:06 4 MR. STAR: I just made an objection to the

17:30:08 5 question. But you can go ahead and answer it, if you

17:30:12 6 understand it.

17:30:12 7 THE WITNESS: No, I don't know.

17:30:14 8 MR. STAR: You'll hear me do that from time

17:30:15 9 to time.

17:30:16 10 THE WITNESS: Yeah. Okay.

17:30:17 11 No, I just -- I'm not sure I understand what

17:30:17 12 "capacity" is. So if you can be clear.

17:30:23 13 Q. BY MR. LAMBERT: Do you -- at the time

17:30:25 14 TopManage was acquired by SAP, did you have an

17:30:29 15 understanding as to the maximum number of current --

17:30:33 16 of concurrent users the software could support?

17:30:36 17 A. No, I did not.

17:30:37 18 Q. Okay. How about transaction volume, same

17:30:42 19 question?

17:30:42 20 A. No. No knowledge.

17:30:49 21 Q. In your job duties with SAP, did you have

17:30:51 22 any responsibility for overseeing marketing?

17:30:55 23 A. No.

17:31:00 24 Q. How about development efforts?

17:31:03 25 A. Yes.

17:31:05 1 Q. For what products?

17:31:11 2 A. For the first few months of my employment by
17:31:14 3 SAP of the -- what was called the SAP Portal. And then
17:31:19 4 from 2004, some -- sometime in 2004, for the Business
17:31:25 5 One product and for another product we code-named
17:31:30 6 Cyprus, which was -- never went to -- never went live.

17:31:35 7 Q. Okay. What was the -- what was Cyprus going
17:31:42 8 to be used as?

17:31:44 9 MR. STAR: Objection.

17:31:45 10 You can go ahead and answer.

17:31:48 11 THE WITNESS: Okay. Cyprus was a -- a very
17:31:51 12 small business package, targeting almost [sic] home
17:31:58 13 offices, few employees.

17:32:03 14 Q. BY MR. LAMBERT: Why did it never go live?

17:32:05 15 A. I don't know. I left the company before it
17:32:07 16 did, and I think it never materialized.

17:32:14 17 Q. During what time periods were you -- I guess
17:32:17 18 for lack of a better word -- involved with SAP Business
17:32:21 19 One?

17:32:24 20 A. Sometime in 2004 until I left my role, which
17:32:29 21 was sometime in 2007.

17:32:40 22 Q. Why did you leave SAP?

17:32:45 23 A. Personal decision to go do other things.

17:32:54 24 Q. Did you have any dispute or anything with SAP
17:32:57 25 that occasioned your departure?

17:33:00 1 A. No.

17:33:03 2 Q. Do you have any post-employment agreement
17:33:06 3 with anyone at SAP?

17:33:08 4 A. Repeat the question, please.

17:33:10 5 Q. Do you have any post-employment agreements,
17:33:14 6 such as a severance agreement or anything, with SAP?

17:33:18 7 A. I did when I left, but not anymore.

17:33:23 8 Q. Okay. Do you have any agreements that
17:33:26 9 constrain your ability to testify today?

17:33:28 10 A. No.

17:33:31 11 Q. Do you still do any work with SAP?

17:33:33 12 A. No.

17:33:36 13 Q. Do you have any business relationship with
17:33:37 14 SAP currently?

17:33:42 15 A. Nice Systems does have a very minor business
17:33:46 16 relationship, but extremely minor.

17:33:51 17 Q. What's the nature of that relationship?

17:33:53 18 A. Basically connectivity of the Nice products
17:33:58 19 into the SAP products. So it's mostly a technical
17:34:02 20 relationship.

17:34:07 21 Q. When you left SAP in 2007, what was the target
17:34:12 22 market for Business One?

17:34:17 23 MR. STAR: Objection to form.

17:34:18 24 You can answer.

17:34:19 25 THE WITNESS: Define "target market."

17:34:23 1 Q. BY MR. LAMBERT: Well, what -- what kinds of
17:34:26 2 companies was SAP Business One being marketed to?

17:34:33 3 A. Mainly small businesses. I don't recall
17:34:36 4 exactly what the boundary was for -- for "small" or
17:34:41 5 "very small." But the target was small businesses
17:34:44 6 or I should say --

17:34:46 7 Q. You don't recall how --

17:34:47 8 A. No.

17:34:47 9 Q. Go ahead.

17:34:48 10 A. No. Either small businesses, just for
17:34:50 11 completeness, or subsidiaries of large enterprises
17:34:54 12 that are small subsidiaries. That was the -- the
17:34:57 13 two target markets, small businesses and subsidiaries.

17:35:01 14 Q. Was the target market defined in terms of
17:35:06 15 number of users?

17:35:09 16 A. I don't recall exactly how we defined it.
17:35:11 17 But "concurrent users" was a -- was a good definition.
17:35:16 18 Yeah.

17:35:17 19 Q. Do you recall, when you left in 2007, what
17:35:19 20 the target market in terms of concurrent users was?

17:35:24 21 A. No, I don't.

17:35:26 22 Q. How about transaction volume?

17:35:28 23 A. Same answer. I don't.

17:35:33 24 Q. But do you recall that was a relevant factor
17:35:35 25 in defining the target market?

17:35:38 1 A. No. I don't, actually.

17:35:44 2 Q. Why not?

17:35:45 3 A. Why don't I recall? I don't know why I don't
17:35:48 4 recall.

17:35:49 5 Q. No. Do you -- was it not used as a -- as a --
17:35:54 6 as a limiting factor in define -- was -- was transaction
17:35:57 7 volume not used as a limiting factor in defining target
17:36:00 8 market?

17:36:00 9 A. No, I said I don't -- I don't recall. I
17:36:03 10 don't know.

17:36:03 11 Q. You don't recall one way or the other?

17:36:06 12 A. Yeah. Correct.

17:36:06 13 Q. Okay. Do you know anything about the
17:36:12 14 architecture of the SAP Business One software?

17:36:14 15 A. I knew a bit about it in the past. What do
17:36:21 16 I remember today? Very little, if any.

17:36:25 17 Q. Well, what do you -- what's your understanding
17:36:27 18 of the term "architecture" as it's used to describe
17:36:30 19 software?

17:36:33 20 A. Mostly technical building blocks and how they
17:36:38 21 connect and interface with each other.

17:36:42 22 Q. Was SAP Business One a two-tier architecture
17:36:46 23 product?

17:36:48 24 A. Yes, it was, as far as I recall.

17:36:52 25 Q. Okay. Are there inherent limitations in a --

17:36:56 1 in a -- in software that's two-tier architecture?

17:37:05 2 A. Generically -- again, I don't remember exactly
17:37:07 3 how Business One is built. But a two-tier application,
17:37:09 4 you have business logic on the -- on the client versus
17:37:15 5 a two -- a three-tier where the business logic resides
17:37:20 6 centrally. So in terms of distribution of -- of
17:37:22 7 software, it's more complicated, et cetera. That's
17:37:27 8 as much as I can say.

17:37:29 9 Q. Well, does two-tier architecture limit the
17:37:33 10 scalability of the software?

17:37:37 11 A. Not necessarily.

17:37:42 12 Q. Why do you say "not necessarily"?

17:37:45 13 A. I mean, generically speaking, I think two-tier
17:37:49 14 applications can be very scalable and can be extreme --
17:37:51 15 extremely not scalable. But that's generic. It has
17:37:57 16 nothing to do with -- with anything specific.

17:38:00 17 Q. Well, the -- the two-tier architecture of
17:38:04 18 SAP Business One, which end of that spectrum do you
17:38:08 19 feel it fell on?

17:38:09 20 A. I don't -- I don't know.

17:38:13 21 Q. You don't recall?

17:38:16 22 A. You know, I -- I mean, I don't recall the
17:38:18 23 numbers, and I don't know exactly what you mean "what
17:38:22 24 end of the scale it fell on."

17:38:25 25 Q. Well, was SAP Business One extremely scalable,

17:38:29 1 as you said some two-tier architectures can be? Or was
17:38:32 2 it very limited in the scalability?

17:38:36 3 A. I think -- I don't -- I mean, I don't know.
17:38:38 4 It's -- it's subjective. It's completely subjective.
17:38:41 5 Obviously, it was -- it was somewhere in between those
17:38:46 6 two terms, I assume, but extremely subjective.

17:38:56 7 Q. Do you know whether SAP's acquisition of
17:39:01 8 two-tier architecture software was consistent with or
17:39:06 9 inconsistent with its existing strategy for software
17:39:12 10 platforms?

17:39:14 11 A. I don't know.

17:39:25 12 Q. Do you recall what the marketing strategy
17:39:27 13 in terms of target market for Business One was in 2004
17:39:34 14 when you became involved with the product?

17:39:38 15 A. What do you mean by "marketing strategy"?

17:39:43 16 Q. Well, the target market in terms of concurrent
17:39:46 17 users.

17:39:47 18 A. No. I don't recall.

17:39:58 19 Q. Do you recall the target market for Business
17:40:00 20 One changing during the course of your involvement with
17:40:06 21 the product?

17:40:10 22 A. No. I don't recall whether we changed it or
17:40:13 23 not. No.

17:40:14 24 Q. Is it that you don't recall one way -- one
17:40:19 25 way or the other or you don't recall it changing?

17:40:21 1 A. No, I don't recall one way or the other.

17:40:25 2 Q. Okay. Do you recall whether SAP conducted
17:40:33 3 tests of Business One's capabilities?

17:40:37 4 A. Yes, we did.

17:40:41 5 Q. What kinds of tests were conducted?

17:40:44 6 A. A few types. Unit tests from testing each
17:40:53 7 component as a unit individually and then functionality
17:40:58 8 testing on the overall product and then load testing,
17:41:02 9 which is usually done automatically for -- for capacity.

17:41:12 10 Q. Is load testing, well, the -- the form of
17:41:15 11 testing that would have been done to determine the
17:41:18 12 maximum number of concurrent users that the product
17:41:21 13 could support?

17:41:26 14 A. Theoretically speaking, yes. Although it's --
17:41:26 15 it's impossible to separate, you know, one parameter
17:41:31 16 from the other.

17:41:32 17 So -- so, obviously, when -- when you load
17:41:35 18 test the system, you -- you take different parameters
17:41:39 19 like number of items in the catalog, number of lines
17:41:42 20 in an order, and number of concurrent users, and --
17:41:45 21 and mix them together to -- and possibly others that
17:41:49 22 I don't recall -- and then -- and to come up with what
17:41:51 23 is a typical capacity, I guess.

17:41:57 24 Q. Do you recall the maximum number of concurrent
17:42:00 25 users that SAP tested Business One with?

17:42:04 1 A. No, I don't.

17:42:10 2 Q. Where were the -- the testing results you just
17:42:13 3 spoke of, where were they recorded or maintained?

17:42:21 4 A. I actually don't know. They're -- I'm sure
17:42:25 5 there are documents about it, but I don't recall where
17:42:29 6 and -- and how it was stored.

17:42:31 7 Q. Was it kept in -- in your office, or was it
17:42:36 8 kept in another location?

17:42:40 9 A. I'm sure it was kept somewhere in the building
17:42:43 10 where my office was, where the testing -- or at least
17:42:47 11 some of them were -- was conducted, some of the testing.
17:42:50 12 But I -- I -- I don't know.

17:42:56 13 Q. Do you know any individuals that would have
17:42:58 14 maintained files relating to the testing results?

17:43:04 15 A. At the time, if I recall correctly -- and
17:43:06 16 I'm not sure if was the full period of my employment
17:43:09 17 with Business One -- the -- the person responsible for
17:43:12 18 testing, her name was Tali Naim. And --

17:43:16 19 Q. Can you spell her name?

17:43:20 20 A. I -- I hope so. T-a-l-i, I think she spelled
17:43:25 21 it. N-a-i-m. She was responsible for the testing of --
17:43:29 22 of Business One.

17:43:38 23 Q. And she was located in your office in Israel?

17:43:41 24 A. Correct.

17:43:45 25 Q. Just so I'm clear, did you work primar --

17:43:47 1 or solely out of an office in Israel, or did you have
17:43:50 2 other office locations?

17:43:53 3 A. My -- myself, I -- I worked only out of
17:43:57 4 Israel. I had employees in several other countries.

17:44:03 5 Q. How many employees did you oversee during
17:44:07 6 your employment with SAP?

17:44:10 7 A. I don't remember the numbers. It was in the
17:44:12 8 hundreds. But I don't remember the number.

17:44:16 9 Q. Do you know where -- physically where the
17:44:20 10 tests were conducted?

17:44:23 11 A. The main site of testing was in Israel. But
17:44:27 12 every development site that we had had its own separate
17:44:31 13 testing for their own parts of the -- of the product.
17:44:38 14 But the main site was Israel.

17:44:43 15 Q. What was the -- what was your business address
17:44:45 16 in Israel when you were with SAP?

17:44:50 17 A. I'm trying to remember. I don't remember.
17:44:55 18 No. Sorry.

17:45:06 19 Q. What was the purpose of conducting the tests
17:45:09 20 we've been talking about?

17:45:13 21 A. Every prod -- every software product,
17:45:15 22 or I guess every product -- but every software
17:45:17 23 product goes through similar testing, unit testing,
17:45:19 24 functionality testing, and then automatic testing for
17:45:24 25 load and sustainability of the software. So the --

17:45:29 1 the purpose was to see that the product was doing
17:45:32 2 what it was supposed to do.

17:45:36 3 Q. I'm sorry. I didn't hear the last part of
17:45:39 4 your answer.

17:45:39 5 A. The last part was --

17:45:39 6 Q. The purpose?

17:45:40 7 A. -- was to see or check that the product is
17:45:42 8 doing what it's supposed to be doing.

17:45:46 9 Q. Okay. Backing up a second, what city in
17:45:52 10 Israel was your office located in?

17:45:53 11 A. The city is called Ra'anana, R-a-a-n-a-n-a.

17:45:59 12 Q. That's where your office was when you were
17:46:01 13 with SAP?

17:46:03 14 A. Correct.

17:46:04 15 Q. Do you recall the street?

17:46:06 16 A. I don't.

17:46:12 17 Q. After the testing was -- was completed, how
17:46:15 18 were the results communicated through SAP? Or were
17:46:21 19 they?

17:46:23 20 A. I don't know. Mostly they were used
17:46:28 21 internally for the development groups. But I don't
17:46:31 22 know if and how it was communicated outside.

17:46:35 23 Q. Were the test results reported back to you
17:46:38 24 at any point in time?

17:46:40 25 A. I assume they were, although I don't recall.

17:46:47 1 Q. Did SAP have anyone outside of the SAP
17:46:49 2 organization perform tests for the software?

17:46:54 3 A. Outside the SAP organization? Not that I
17:46:58 4 recall.

17:47:04 5 Q. Do you know what SAP did, if anything, to
17:47:09 6 qualify potential sales of Business One to customers?

17:47:16 7 MR. STAR: Objection to form.

17:47:16 8 You can answer.

17:47:20 9 THE WITNESS: No. I actually don't. I
17:47:23 10 wasn't involved with -- with qualifying customers.
17:47:25 11 So I don't -- I don't know.

17:47:36 12 Q. BY MR. LAMBERT: You ever heard of the term
17:47:37 13 "sweet spot" used in reference to Business One?

17:47:42 14 A. Say again the term.

17:47:43 15 Q. "Sweet spot."

17:47:48 16 A. Well, it's a generic term. I have seen it
17:47:51 17 in one of the documents that I looked at two weeks ago,
17:47:54 18 so -- so yeah.

17:48:00 19 Q. Do you recall when that term first started
17:48:01 20 being used with reference to SAP Business One?

17:48:08 21 A. No, I don't. It's a generic term that it's
17:48:11 22 used. But no, I don't re -- I don't remember.

17:48:14 23 MR. LAMBERT: Okay. Can we turn to Tab 17
17:48:22 24 in the new exhibits, and let's mark that as Exhibit 240.

17:48:36 25 MR. STAR: Wes.

17:48:36 1 MR. LAMBERT: Yeah?

17:48:36 2 MR. STAR: Since I don't have a tabbed binder,
17:48:38 3 would you just identify by Bates label the documents
17:48:42 4 that you're going to go to?

17:48:45 5 MR. LAMBERT: This one actually doesn't have
17:48:46 6 a Bates label on it. But it's called:

17:48:49 7 "SAP Business One 'Sweet Spot' Overview for
17:48:53 8 Partners."

17:48:55 9 MR. STAR: All right. You're going to have
17:48:57 10 to give us a minute to find it before you ask some
17:49:01 11 questions about it.

17:49:12 12 MR. GAMULKA: Does it look like that?
17:49:13 13 (Indicating.) You can't --

17:49:17 14 MR. LAMBERT: As far as I can tell --

17:49:17 15 MR. GAMULKA: Yeah. You can't see it.

17:49:18 16 MR. LAMBERT: -- it looks like it.

17:49:24 17 MR. STAR: What's it called?

17:49:28 18 MR. LAMBERT: It would have been labeled
17:49:29 19 Tab 17 in the e-mail that my assistant sent you.
17:49:29 20 It's called:

17:49:32 21 "SAP Business One 'Sweet Spot' Overview."

17:49:36 22 There's a little gray box in the left-hand
17:49:38 23 corner.

17:49:38 24 (U. Ziv Exhibit 240 marked.)

17:49:39 25 MR. STAR: Yeah, I have it. I have it.

17:49:40 1 MR. LAMBERT: Okay.

17:49:41 2 MR. STAR: Go ahead. You marked it as 240?

17:49:43 3 MR. GAMULKA: Right.

17:49:56 4 Q. BY MR. LAMBERT: Mr. Ziv, if you could review

17:49:59 5 what's been marked as Exhibit 240 and let me know when

17:50:03 6 you're finished.

17:50:04 7 A. All of it?

17:50:05 8 Q. Well, as much as you -- I'm -- I'm going

17:50:07 9 to ask a few discrete questions about it. But as much

17:50:09 10 as you want to review to feel comfortable to answer my

17:50:12 11 questions.

17:50:13 12 A. Okay. Let me review it, then. (Examining.)

17:50:16 13 Q. Have you ever seen this document before?

17:50:18 14 A. I don't recall that I have.

17:50:32 15 Q. There's a statement up at the top:

17:50:34 16 "What is the 'sweet spot' for the SAP Business

17:50:37 17 One" software? (As read.)

17:50:39 18 Do you see that?

17:50:39 19 A. Yes, I do.

17:50:43 20 Q. And the first bullet point there is:

17:50:47 21 "Have 10 to 100 employees and" typical --

17:50:49 22 "typically fewer than 30 professional users." (As

17:50:54 23 read.)

17:50:54 24 Do you see that statement?

17:50:56 25 A. I do.

17:50:57 1 Q. Have you reviewed that? Does that give you
17:51:00 2 an indication as to when this document might have been
17:51:03 3 generated?

17:51:04 4 A. No, it doesn't.

17:51:06 5 Q. Is it the type of document you would have seen
17:51:11 6 in the course of your employment with SAP?

17:51:15 7 A. I may -- I may have, but not -- but not
17:51:18 8 necessarily. This is outbound going, which I was
17:51:22 9 less involved with.

17:51:25 10 Q. Would you have been more involved with
17:51:28 11 generating the -- I guess, the underlying knowledge
17:51:32 12 base in order to prepare this document?

17:51:38 13 A. Not personally. But my organization would
17:51:41 14 do the -- as we said before, the testing, for example,
17:51:45 15 that would lead marketing into writing whatever
17:51:48 16 documents they were writing.

17:51:53 17 Q. Okay. So your organization would do the --
17:51:55 18 the testing and compile the results and then communicate
17:52:01 19 those to other departments within SAP so they could
17:52:03 20 prepare documents like Exhibit 240?

17:52:08 21 A. Yeah. I assume so, yeah.

17:52:13 22 Q. Do you recall when the determination was made
17:52:15 23 that the sweet spot for SAP Business One was 10 to 100
17:52:21 24 employees and typically fewer than 30 professional
17:52:24 25 users?

17:52:27 1 A. No, I don't.

17:52:30 2 Q. Do you know who the individuals were that
17:52:33 3 would have been involved with issuing Exhibit 240?

17:52:39 4 A. No, I don't.

17:52:43 5 Q. Do you know what department within SAP they
17:52:46 6 would have been in?

17:52:50 7 A. I don't. Typically, they would either be
17:52:54 8 from what we call solution marketing or from the partner
17:52:57 9 organization. But I -- I -- I don't know which one
17:53:00 10 of -- of them developed this.

17:53:06 11 Q. Okay. Can you turn to -- let's turn to Tab 10
17:53:11 12 and mark that as 241.

17:53:17 13 A. What do I do with this? (Indicating.)

17:53:20 14 MR. LAMBERT: Greg, that's SAP 13221.

17:53:31 15 MR. GAMULKA: What tab is it, Wes? I didn't
17:53:34 16 find it. Easier that way.

17:53:35 17 MR. LAMBERT: It's 10.

17:53:40 18 MR. GAMULKA: And does that begin with an
17:53:48 19 e-mail to Udi Ziv from Gilad Gruber?

17:53:53 20 MR. LAMBERT: Correct.

17:54:02 21 (U. Ziv Exhibit 241 marked.)

17:54:12 22 THE WITNESS: (Examining.) Okay.

17:54:18 23 Q. BY MR. LAMBERT: Mr. Ziv, I'll represent
17:54:19 24 to you Exhibit 241 was --

17:54:22 25 MR. STAR: I don't have it yet, Wes.

17:54:25 1 MR. LAMBERT: Okay.

17:54:32 2 MR. STAR: April 18, 2005?

17:54:35 3 MR. LAMBERT: Right.

17:54:36 4 MR. STAR: Okay. All right.

17:54:38 5 Q. BY MR. LAMBERT: Mr. Ziv, I'll represent to
17:54:40 6 you that Exhibit 241 was produced to me from SAP. It's
17:54:45 7 my understanding that this was collected from a review
17:54:49 8 of your files as they were kept in the ordinary course
17:54:55 9 of business.

17:54:57 10 Have you ever seen Exhibit 241 before?

17:55:00 11 A. I don't recall.

17:55:06 12 Q. Do you have any reason to doubt that this came
17:55:08 13 from your files at SAP?

17:55:12 14 A. No.

17:55:18 15 Q. Is this the -- the type of document that
17:55:19 16 ordinarily would have been sent to you in the course
17:55:21 17 of your employment with SAP?

17:55:23 18 A. Yeah.

17:55:26 19 Q. Okay. Who's Gilad Gruber?

17:55:31 20 A. Gilad was, at the time, one of the development
17:55:35 21 managers of Business One.

17:55:42 22 Q. What was his -- what were his job
17:55:45 23 responsibilities?

17:55:49 24 A. Definitely development. I don't recall if
17:55:51 25 he was also responsible for testing or -- or was --

17:55:54 1 or it was separate. But development and potentially
17:55:58 2 testing as well.

17:56:01 3 Q. What's the difference between development
17:56:03 4 and testing?

17:56:05 5 A. Development -- sorry?

17:56:10 6 Q. As you're using those terms, there -- I
17:56:13 7 take it there were two different departments at SAP
17:56:18 8 for development and -- and for testing.

17:56:20 9 Is that correct?

17:56:21 10 A. Yeah. There is -- the development is what --
17:56:23 11 are the people who are actually writing the software,
17:56:26 12 writing the code that creates or makes the software.
17:56:30 13 Testing are people that are taking what development
17:56:34 14 are being -- producing and, again, testing it that
17:56:36 15 it's -- to check whether it does what it's supposed
17:56:39 16 to do.

17:56:41 17 Q. Okay. So Mr. Gruber was definitely someone
17:56:46 18 in development, but you're not sure whether he also
17:56:49 19 did testing --

17:56:50 20 A. Correct.

17:56:52 21 Q. -- is that correct?

17:56:54 22 A. Correct.

17:56:55 23 Q. This e-mail attaches a series of slides
17:56:57 24 called:

17:56:57 25 "2005 Development Checkpoint."

17:57:00 1 A. Uh-huh.

17:57:01 2 Q. Are you familiar with those -- are you
17:57:03 3 familiar with those slides?

17:57:05 4 A. No, I'm not.

17:57:13 5 Q. Do you know what a -- what these -- what
17:57:15 6 the purpose of these slides is?

17:57:19 7 A. Just by reading through it, it's kind of
17:57:22 8 a status overview. But it's only from reading it now.

17:57:30 9 Q. Does it appear to be a -- a overview of the
17:57:34 10 status of Business One's development as of March 28,
17:57:36 11 2005?

17:57:38 12 A. You know, I can only speculate. Just by
17:57:42 13 reading what it says here, it looks like it's in --
17:57:46 14 it's a status of in -- in process -- of a -- of a
17:57:55 15 release, which is -- and it seems to me like the --
17:58:03 16 from whatever Slide No. 2 or page No. 2 -- Slide No. 2
17:58:06 17 here, that it's in the middle of the testing period
17:58:09 18 of -- of the product. But, again, it's only from
17:58:13 19 reading it now.

17:58:17 20 Q. Did Mr. Gruber report to you?

17:58:19 21 A. Yes, he did.

17:58:22 22 Q. Is this something that he -- from looking at
17:58:25 23 Exhibit 241, was he sending this to you for your review?

17:58:30 24 A. No. I think more for my information.

17:58:39 25 Q. Is this -- SAP Business One was released --

17:58:41 1 there was different versions of the -- of the software
17:58:47 2 released over a period of years; correct?

17:58:50 3 A. Correct. Yes.

17:58:51 4 Q. There was a -- there's a Version 2005;
17:58:54 5 correct?

17:58:57 6 A. I don't recall exactly. It sounds familiar,
17:58:59 7 but I'm not sure.

17:59:05 8 Q. Do you recall -- can you turn to page 3 of
17:59:07 9 that presentation? It's a slide called:

17:59:17 10 "Management Summary 1."

17:59:18 11 A. Yes.

17:59:22 12 Q. There's a -- there's a section in there under
17:59:24 13 the first bullet point for Citrix. And it says:

17:59:29 14 "No testing since no Citrix license."

17:59:34 15 Do you see that?

17:59:34 16 A. I do.

17:59:35 17 Q. Does that mean that, up until the date of
17:59:37 18 this document, SAP had not tested Business One in a
17:59:42 19 Citrix environment?

17:59:44 20 A. I don't know. I don't know what it means.
17:59:46 21 It could be something temporal in this testing cycle.
17:59:49 22 I don't know.

17:59:51 23 Q. Do you recall whether SAP had tested Business
17:59:54 24 One in the Citrix environment as of March 2005?

18:00:00 25 A. I don't.

18:00:07 1 Q. Do you know whether a Citrix environment would
18:00:11 2 require its -- its own testing to be done or separate
18:00:13 3 testing to be done?

18:00:16 4 A. Again, generically speaking, every different
18:00:20 5 environment theoretically requires different testing.
18:00:24 6 Yes.

18:00:28 7 Q. Well, is there something unique about a Citrix
18:00:31 8 environment and the way it interacts with Business One
18:00:33 9 that would require independent testing?

18:00:37 10 A. I don't know.

18:00:38 11 MR. LAMBERT: If you'd turn to Tab 11 in your
18:00:50 12 notebook, and let's mark that as Exhibit 242.

18:01:03 13 Greg, that's SAP 13242.

18:01:25 14 MR. GAMULKA: The title?

18:01:27 15 MR. LAMBERT: "Update on B1 Business Cases."

18:01:33 16 MR. STAR: I have it. Thanks.

18:01:35 17 (U. Ziv Exhibit 242 marked.)

18:01:35 18 Q. BY MR. LAMBERT: I'm showing you exhibit --

18:01:53 19 MR. STAR: Before you go on -- before you go
18:01:53 20 on, I don't think we had a full run-down of everybody
18:01:57 21 who's in the room with you. Do we know? Can you tell
18:02:01 22 us?

18:02:01 23 MR. LAMBERT: Yeah. There's Kevin Reidl and
18:02:03 24 Bill Rex of Hodell are here. And then my partner Jim
18:02:05 25 Koehler's here.

18:02:08 1 MR. STAR: Okay. Anybody else?

18:02:12 2 MR. LAMBERT: Nope.

18:02:34 3 Q. BY MR. LAMBERT: Mr. Ziv, let me know when
18:02:36 4 you're ready and we'll begin.

18:02:39 5 A. Okay. I'm reading it. (Examining.)

18:02:42 6 Q. Are you ready for me to ask questions, or you
18:02:44 7 want to continue reading it?

18:02:45 8 A. No, no. I'm reading. I'll -- I'll let you
18:02:47 9 know when I'm done.

18:02:49 10 Q. Okay.

18:03:19 11 A. (Examining.)

18:03:26 12 Q. Okay?

18:03:27 13 A. Okay. Let's start. I haven't read it all.
18:03:30 14 But let's -- let's start and see if I need to read it
18:03:33 15 further.

18:03:34 16 Q. Have you ever seen this document before?

18:03:37 17 A. I don't recall. I assume I have, but I don't
18:03:40 18 recall that I have.

18:03:43 19 Q. I'll represent to you this was -- this was
18:03:45 20 also produced by SAP from your files --

18:03:48 21 A. Uh-huh.

18:03:48 22 Q. -- last week.

18:03:50 23 Do you have any reason to believe that -- that
18:03:53 24 this wasn't a document you maintained in your file?

18:03:57 25 A. No. No reason to believe that.

18:04:01 1 Q. The -- the document's titled:
18:04:03 2 "Update on B1 Business Cases."
18:04:05 3 A. Uh-huh.
18:04:06 4 Q. Is that -- is this a document that would have
18:04:08 5 been regularly -- regularly prepared and circulated at
18:04:12 6 SAP?
18:04:15 7 A. No. I don't think so.
18:04:16 8 Q. It has your name on the first slide.
18:04:23 9 Do you recall preparing this document or --
18:04:25 10 or similar presentations?
18:04:29 11 A. No. I don't recall preparing it.
18:04:30 12 I assume the other person, Gadi Shamia, who
18:04:35 13 worked for me, prepared this. And it looks to me like
18:04:37 14 an intern -- something that was produced internally
18:04:41 15 from my organization. But, again, I don't recall.
18:04:43 16 Just from reading it, this is my -- my guess.
18:04:49 17 Q. When you say your "organization," do you
18:04:51 18 mean just your department within SAP?
18:04:56 19 A. Correct. This -- it seems like a
18:04:58 20 communication to either management or -- or employees
18:05:00 21 in my Small Business Solutions organization within SAP.
18:05:07 22 Q. What -- before we move further, what do you
18:05:11 23 mean by "Small Business Solutions," just so we know
18:05:13 24 how you're using that term?
18:05:15 25 A. It's a -- it's an organization term.

18:05:18 1 It's -- as I said in the beginning, one of
18:05:20 2 my roles was the general manager of the Small Business
18:05:24 3 Solutions for SAP, which have Business One and, as
18:05:29 4 I said, code name Cyprus under -- from a product
18:05:37 5 perspective, under their organization's responsibility.

18:05:38 6 So when I say "SBS" or "Small Business
18:05:40 7 Solutions," I mean the organization that I managed.

18:05:44 8 Q. Okay. And Business One was the only live
18:05:48 9 piece of software that was encompassed within Small
18:05:54 10 Business Solutions during your employment?

18:05:55 11 A. The only product that was generally avail --
18:05:57 12 available. Yes.

18:06:00 13 Q. Okay. Is it fair to say that most of your
18:06:10 14 job responsibilities centered on the deployment of
18:06:15 15 SAP Business One?

18:06:19 16 A. No. My -- my main responsibility was on
18:06:25 17 development of the product, not deployment of the
18:06:27 18 product. And, also, as -- as usually is the case
18:06:31 19 with newer products, it's -- a significant amount
18:06:34 20 of my time was on the new product code-named Cyprus.
18:06:38 21 So it was a mix of the two. But not deployment, but
18:06:46 22 rather development.

18:06:46 23 Q. I'm sorry. I misspoke. But -- well, strike
18:06:48 24 that.

18:06:48 25 When did -- when did Cyprus go into the --

18:06:50 1 into development?

18:06:55 2 A. Don't remember.

18:06:57 3 Q. Okay. Let's turn back to this --

18:07:01 4 A. Uh-huh.

18:07:02 5 Q. -- Exhibit 242.

18:07:03 6 What -- what was Gadi Shamia's position with
18:07:06 7 SAP?

18:07:08 8 A. Gadi Shamia was the head of solution
18:07:11 9 management of Small Business Solutions, reporting to me.

18:07:23 10 Q. What does solution management do?

18:07:27 11 A. In other companies, it's sometimes called
18:07:30 12 product management, which has two -- two main roles.
18:07:33 13 One is to speak to customers and understand the market
18:07:40 14 so they know what products to build. And the other
18:07:44 15 is -- this is called outbound solution management.

18:07:48 16 And the inbound solution management is
18:07:50 17 actually writing the specifications for the developers
18:07:54 18 so they know exactly what they need to develop on a --
18:07:58 19 in -- on a very specific technical basis.

18:08:05 20 Q. The -- the title of this document, "Update
18:08:08 21 on B1 Business Cases" --

18:08:10 22 A. Uh-huh.

18:08:10 23 Q. -- can you tell me what -- what "business
18:08:13 24 cases" are or what that term means?

18:08:17 25 A. Yeah. The -- again, I -- I -- I don't recall

18:08:21 1 exactly. But, generically, we use the term "business
18:08:25 2 cases" to go up to management, to what is called at SAP
18:08:28 3 the "board," and to present a business case for new --
18:08:33 4 new development. It usually came with new resources,
18:08:37 5 with additional resources.

18:08:40 6 And just by reading the first few pages here,
18:08:44 7 it's an update from Gadi and myself to the organization
18:08:49 8 of where do we stand and what business cases were
18:08:52 9 approved by the board and what weren't.

18:08:55 10 Q. Well, is a business case -- I'm -- I'm
18:08:58 11 trying to understand what a business case is.

18:09:00 12 Is that a development effort or a -- or a new
18:09:05 13 functionality or something with regard to the software?

18:09:08 14 A. It can be both. It's usually something
18:09:10 15 that we request. We come up with a potential business
18:09:15 16 that can be made, so presenting the -- the top-line
18:09:20 17 opportunity and then what will it require from a
18:09:25 18 development perspective and -- and other perspectives
18:09:26 19 in order to build this.

18:09:28 20 And you bring this to -- as -- as -- along
18:09:31 21 with many other business cases within a company towards
18:09:35 22 a decision at the board of what is the more compelling,
18:09:38 23 more important business case for the company. The
18:09:42 24 business cases that were approved were -- went ahead
18:09:45 25 into the development, et cetera. And the ones that

18:09:49 1 weren't approved were just dumped.

18:09:53 2 Q. Okay. Do you recall when Exhibit 242 would
18:09:58 3 have been prepared?

18:10:00 4 A. No, I don't.

18:10:03 5 Q. Is there a -- was there a -- a period of
18:10:05 6 time during any given fiscal year when you would
18:10:09 7 have conducted a review like -- like is reflected
18:10:13 8 in Exhibit 242?

18:10:18 9 A. I don't recall exactly when this was -- these
18:10:21 10 business cases are -- referred to here were presented.
18:10:24 11 But, generically, this was done as part of the budgeting
18:10:29 12 process, which started sometime in the summer, late
18:10:31 13 summer, and lasted a few months. But, again, I don't
18:10:34 14 recall exactly when this was presented.

18:10:40 15 Q. Okay. Can you turn to Slide 2?

18:10:43 16 A. Yes.

18:10:46 17 Q. There's a statement at the top:

18:10:47 18 "Other than the already approved foundation
18:10:50 19 business case" --

18:10:52 20 A. Uh-huh.

18:10:52 21 Q. (Reading.)

18:10:52 22 -- "no other B1 business cases were approved
18:10:54 23 for 2005."

18:10:57 24 Do you see that?

18:10:57 25 A. Uh-huh.

18:10:59 1 Q. Do you know what is meant by that -- by that
18:11:02 2 statement?

18:11:04 3 A. No. I can speculate. But no, I don't know
18:11:09 4 exactly what -- what were the other business cases,
18:11:12 5 et cetera. But, clearly, there was only one that was
18:11:16 6 approved and the rest were not.

18:11:18 7 Q. Well, since your name's on the front page,
18:11:22 8 I'd like you to just make an educated stab at -- at
18:11:26 9 what you think was meant by that statement.

18:11:36 10 A. You know, probably the -- there were a few
18:11:38 11 business cases that we -- during -- as an -- as an
18:11:41 12 organization prepared, brought up for approval. And,
18:11:48 13 basically, what this statement is saying, there's only
18:11:51 14 one that was even already approved before. Other than
18:11:55 15 that one, no other -- none other of our business cases
18:11:59 16 was -- was approved.

18:12:03 17 Q. Okay. And there are two bullet points in
18:12:05 18 that slide --

18:12:06 19 A. Uh-huh.

18:12:06 20 Q. -- as well; correct?

18:12:07 21 A. Uh-huh.

18:12:08 22 Q. And the second one read -- the second reads:
18:12:12 23 "Due to the heavy investments in the higher
18:12:15 24 priority topics" --

18:12:18 25 And there's some parentheses, and then it

continues.

-- "the board could not allocate any more resources to Business One."

Do you see that?

A. Uh-huh. Correct. Yes.

Q. Do you recall the board communicate -- the SAP board communicating to you in 2005 that they could not allocate more resources to Business One?

A. No, I don't recall the -- their communication. I can see what I see in front of me here. It's fairly straightforward.

Q. Do you recall learning, at some point in 2005, that no additional resources would be communicated to Business One?

A. No, I don't recall. I see it here, but I don't recall.

THE VIDEOGRAPHER: Excuse me, Counsel. This is the videographer speaking. We have five minutes left on the tape.

MR. LAMBERT: Okay. I've got a fair amount left with this document. So why don't we switch the tape and then keep going.

THE WITNESS: Okay. Can we take a break while we do this?

THE VIDEOGRAPHER: This is the end --

18:13:21 1 MR. LAMBERT: Absolutely.

18:13:23 2 THE VIDEOGRAPHER: This is the end of Tape
18:13:24 3 No. 1 in the video deposition of Udi Ziv. Going off
18:13:28 4 the record. The time is 6:12.

18:13:31 5 (Recess from 6:12 p.m. to 6:19 p.m.)

18:18:24 6 THE VIDEOGRAPHER: This is the beginning of
18:20:07 7 Tape No. 2 in the video deposition of Udi Ziv. Going
18:20:12 8 back on the record. The time is 6:19.

18:20:22 9 Q. BY MR. LAMBERT: Mr. Ziv, I want to -- I want
18:20:24 10 to stay on Slide No. 2 for a second --

18:20:29 11 A. Yeah.

18:20:29 12 Q. -- and focusing on that second bullet point,
18:20:32 13 the -- the statement:

18:20:34 14 "Due to the heavy investments in...higher
18:20:36 15 priority topics." (As read.)

18:20:38 16 Do you see that?

18:20:38 17 A. Yes, I do.

18:20:40 18 Q. Do you know what that's referring to, what
18:20:42 19 other topics?

18:20:44 20 A. Only what it says here. NetWeaver is
18:20:47 21 the first one, the application -- the new application
18:20:52 22 platform that SAP was developing at that time. And
18:20:56 23 the enterprise services architecture enablement of
18:21:00 24 all the applications. That's all I know.

18:21:05 25 Q. Okay. Do you recall whether one of those

18:21:08 1 higher priority topics would have been software by
18:21:11 2 the name of A1 or All-in-One?

18:21:18 3 A. No, they're not.

18:21:23 4 Q. Do you know what A1 or All-in-One is or was?

18:21:29 5 A. Yes, I do. All-in-One was a -- a standard R3,
18:21:36 6 which was the larger scale product, which was limited
18:21:42 7 to certain functionality in order to fit mid-market.

18:21:48 8 (Court reporter clarification.)

18:21:48 9 THE WITNESS: "Mid market."

18:21:49 10 Q. BY MR. LAMBERT: Okay. Is All-in-One
18:21:53 11 essentially a scaled-down version of R3?

18:21:58 12 A. I think it's fair to say that. Yes.

18:22:02 13 Q. Okay. What -- do you recall what the -- the
18:22:07 14 types of companies A1 was intended to be sold to?

18:22:13 15 A. Other than mid-market, no, I don't remember.

18:22:19 16 Q. What do you mean by "mid-market"?

18:22:24 17 A. As I said, mid-market. I don't remember
18:22:26 18 the -- the boundaries of how "mid-market" was defined.

18:22:32 19 Q. Well, do you recall whether Business One
18:22:36 20 was marketed to the mid-market as well?

18:22:41 21 A. No. Business One was a small business
18:22:43 22 solution.

18:22:49 23 Q. Okay. So it's your understanding that
18:22:51 24 Business One was never intended to be sold to companies
18:22:53 25 in the mid-market; correct?

18:22:58 1 A. I don't think I can categorically say that.
18:23:01 2 The product is meant for -- for, you know, a segment.
18:23:04 3 In this case, Business One is for small businesses.
18:23:07 4 But depending on the situation, it can be sold
18:23:11 5 elsewhere.

18:23:15 6 Q. Okay. Do you recall whether the -- the
18:23:21 7 intended market for All-in-One overlapped in any
18:23:26 8 respects with the intended market for Business One?

18:23:31 9 A. I don't recall the specifics. But I do
18:23:34 10 recall that, by definition, we wanted to have an overlap
18:23:39 11 between the different products covering the different
18:23:41 12 segments. The statement was that, if there wasn't
18:23:41 13 an overlap, there's a crack in between the two that
18:23:46 14 competitors would go in.

18:23:48 15 So I don't remember the specifics. But,
18:23:50 16 generically, the answer is yes, there is an overlap.

18:23:55 17 Q. And in this instance, the higher end of
18:23:58 18 Business One would overlap with the lower end of
18:24:02 19 All-in-One? Or was there a product in between?

18:24:04 20 A. No. Your statement is correct.

18:24:08 21 The Business One was for small businesses.
18:24:10 22 All-in-One was for the mid-market, which was the layer
18:24:15 23 above. And -- and, again, generically, there was an
18:24:17 24 overlap.

18:24:19 25 Q. Do you recall when All-in-One went -- or

18:24:23 1 began development?

18:24:28 2 A. No, I don't.

18:24:30 3 Q. Was it -- sorry.

18:24:32 4 Was it in development when you began with
18:24:36 5 SAP Business One in 2004?

18:24:38 6 A. I don't recall.

18:24:45 7 Q. Is it fair to say that it wasn't -- All-in-One
18:24:47 8 wasn't live in the marketplace in 2004?

18:24:54 9 A. I don't know. I don't know if it was or
18:24:56 10 wasn't. I don't remember.

18:25:06 11 Q. Isn't it true that, at some point, SAP pulled
18:25:10 12 resources from your department and allocated them to
18:25:14 13 the All-in-One software?

18:25:18 14 MR. STAR: Objection to the form.

18:25:20 15 You can answer if you understand.

18:25:23 16 THE WITNESS: I understand the question.

18:25:25 17 I don't remember if this happened or not.

18:25:27 18 Q. BY MR. LAMBERT: Well, were individuals
18:25:29 19 in your department moved from your department to
18:25:33 20 All-in-One?

18:25:35 21 MR. STAR: Same objection.

18:25:37 22 THE WITNESS: I don't recall.

18:25:41 23 Q. BY MR. LAMBERT: You don't recall whether
18:25:42 24 your employees were pulled out from under your oversight
18:25:46 25 and moved to another product?

18:25:49 1 MR. STAR: Asked and answered.

18:25:53 2 THE WITNESS: It's -- you know, people move
18:25:54 3 within a company. I don't recall if any of them were
18:25:57 4 moved into All-in-One or not. I don't -- no, I don't.

18:26:02 5 Q. BY MR. LAMBERT: Well, regardless of where
18:26:04 6 they were moved to, do you recall them being removed
18:26:08 7 from your department and moved to other areas in SAP?

18:26:12 8 A. Yeah. There are people that move from one
18:26:15 9 organization to another. Yes.

18:26:19 10 Q. Well, and with regard to your organization
18:26:21 11 specifically, when those people were removed, were
18:26:24 12 they replaced?

18:26:27 13 A. I don't remember. I assume they were, but
18:26:30 14 I don't remember.

18:26:38 15 Q. Did the decision by the board to not allocate
18:26:44 16 funds to Business One in 2005 affect the development
18:26:48 17 efforts of your organization for the product?

18:26:54 18 A. I don't remember what had happened at the
18:26:57 19 time. Generically, if you don't get more resources,
18:26:58 20 obviously it affects whether -- your ability to fulfill
18:27:02 21 the business cases you wanted to -- to fulfill. But
18:27:07 22 I don't remember the case specifically.

18:27:17 23 Q. Did the decision by the board to not allocate
18:27:21 24 more resources to Business One in 2005 affect technical
18:27:26 25 support for the product in the United States?

18:27:34 1 A. I don't know. What is referred to in this
18:27:38 2 document is only my organization, which didn't lose
18:27:42 3 the technical support in the United States. So I
18:27:44 4 don't know.

18:27:51 5 Q. Do you recall whether the decision by the
18:27:52 6 board to not allocate resources to Business One in 2005
18:27:57 7 would have been communicated to individuals outside of
18:28:01 8 your organization?

18:28:03 9 A. Well, the decision was not not to allocate
18:28:07 10 resources, but rather not to allocate more resources.
18:28:11 11 And I don't recall how it was communicated. I assume
18:28:14 12 it was known, but I don't know.

18:28:19 13 Q. Do you know whether it was communicated to
18:28:22 14 SAP Business One business partners?

18:28:25 15 A. No, I don't know.

18:28:30 16 Q. I'm sorry. You don't know, or you know that
18:28:32 17 it wasn't?

18:28:34 18 A. I don't know whether it was communicated.

18:28:37 19 Q. Okay. Can you turn to Slide 15? It has
18:28:44 20 SAP 13256 at the bottom.

18:28:48 21 A. Yeah. Can I read it first?

18:28:53 22 Q. Absolutely.

18:28:54 23 A. (Examining.) Sure. I'm ready.

18:29:25 24 Q. The second topic on that slide is:

18:29:27 25 "When and what is going to be communicated

18:29:30 1 to the whole organization?"

18:29:31 2 A. Uh-huh.

18:29:31 3 Q. Do you see that?

18:29:32 4 A. Yes.

18:29:34 5 Q. Does that refresh your memory as to whether
18:29:36 6 this information was communicated to anyone else outside
18:29:40 7 of your department?

18:29:42 8 A. Actually, by reading this slide, it's clear
18:29:45 9 that this was a -- only to my management and not even
18:29:52 10 to my organization at this time. So, obviously, this
18:29:58 11 was not going to the whole organization or outside of
18:30:01 12 the organization.

18:30:04 13 Q. Okay. So this would have been directed
18:30:07 14 at just upper management within the Small Business
18:30:09 15 Solutions department?

18:30:12 16 A. I don't recall that specifically. But from
18:30:14 17 reading what I'm reading now, it seems that way. Yes.

18:30:19 18 Q. Okay. And then this slide is discussing
18:30:23 19 how to communicate this information outside of your
18:30:26 20 organization at a product summit in Miami.

18:30:32 21 Do you see that?

18:30:34 22 MR. STAR: Objection to form.

18:30:36 23 THE WITNESS: What it says here is that these
18:30:38 24 things will be discussed in the product summit in Miami
18:30:42 25 and then decisions will be made on how to communicate.

18:30:49 1 Q. BY MR. LAMBERT: Do you recall attending a
18:30:50 2 product summit in Miami in 2005?

18:30:53 3 A. I vaguely do. Yes.

18:30:56 4 Q. Do you recall the information being discussed
18:30:59 5 in this document being discussed at that -- at that
18:31:01 6 product summit?

18:31:03 7 A. No, I don't.

18:31:07 8 Q. It seems to me that the decision by SAP's
18:31:10 9 board to not allocate further resources to Business
18:31:13 10 One would have been a pretty significant development
18:31:17 11 at the time it was made.

18:31:20 12 Is that not the case?

18:31:22 13 MR. STAR: Objection to form.

18:31:25 14 THE WITNESS: Yeah. It's -- it's fairly
18:31:27 15 normal that product organizations request resources
18:31:30 16 every year going into budgeting. And in many cases,
18:31:34 17 these are not approved. So it's fairly routine.
18:31:37 18 Obviously, it's disappointing, but it's very --
18:31:41 19 it's fairly routine.

18:31:55 20 Q. BY MR. LAMBERT: Going back to the --
18:31:55 21 the Miami product summit, do you recall giving any
18:32:00 22 presentations or -- or speeches at that summit?

18:32:04 23 A. No, I don't. Definitely not speeches.
18:32:07 24 This was a -- I don't know -- a 10- or 12-people event.
18:32:12 25 It's -- it was a management meeting. So definitely not

18:32:18 1 speeches. But no, I don't recall any presentation --
18:32:20 2 specific presentations that were given.

18:32:23 3 MR. LAMBERT: Turn to Tab 2 in that binder,
18:32:30 4 and let's mark that as 243.

18:32:38 5 MR. GAMULKA: What -- what's the exhibit
18:32:40 6 called?

18:32:43 7 MR. LAMBERT: It's called:
18:32:45 8 "SAP Business One 2006 Plan."
18:32:52 9 SAP 13029.

18:32:55 10 (U. Ziv Exhibit 243 marked.)

18:32:58 11 THE WITNESS: Thank you.

18:32:58 12 MR. LAMBERT: Does everybody have it?

18:33:17 13 MR. STAR: Yes.

18:33:18 14 Q. BY MR. LAMBERT: Okay. Mr. Ziv, please review
18:33:21 15 Exhibit 243 and let me know when you're ready.

18:33:25 16 A. Okay. (Examining.) Okay. I'm ready.

18:34:55 17 Q. Mr. Ziv, I'll represent to you that
18:34:57 18 Exhibit 243 is another document that was produced
18:35:00 19 by SAP as part of a collection from your files.

18:35:04 20 Have you ever seen Exhibit 243 before?

18:35:07 21 A. I don't remember.

18:35:11 22 Q. I'm sorry. I couldn't hear you.

18:35:14 23 A. Oh, I'm sorry. I said I don't remember.

18:35:16 24 Q. Okay. Any reason to believe this didn't come
18:35:20 25 from your file?

18:35:21 1 A. No. No reason.

18:35:25 2 Q. Is this a document that you would have
18:35:26 3 regularly reviewed as -- as part of your position
18:35:29 4 with SAP?

18:35:32 5 A. I don't know what the term "regular" is.
18:35:34 6 But it's something I may have been reviewing. Yeah.

18:35:42 7 Q. Okay. Do you know who David Kadosh is?

18:35:47 8 A. Yes. David Kadosh worked for -- as a -- in
18:35:51 9 the product definition organization, which was part of
18:35:55 10 solution management, part of Gadi Shamia's organization.

18:36:03 11 Q. He ultimately reported -- David Kadosh
18:36:08 12 ultimately reported to you, though; correct?

18:36:10 13 A. Yeah. He rolled up into me. Yes.

18:36:14 14 (Court reporter clarification.)

18:36:14 15 THE WITNESS: He rolled up into me.

18:36:17 16 Q. BY MR. LAMBERT: This document's dated
18:36:26 17 December 13, 2005.

18:36:28 18 Do you recall reviewing any of this
18:36:30 19 information on or around December 13, 2005?

18:36:35 20 A. No. I don't recall.

18:36:38 21 Q. Okay. If you turn to the second page of
18:36:41 22 that document --

18:36:41 23 A. Uh-huh.

18:36:42 24 Q. -- titled:

18:36:44 25 "2006 Objectives and Priorities."

18:36:47 1 A. Yes.

18:36:49 2 Q. First of all, do you -- do you have an
18:36:51 3 understanding as to what the purpose of this document
18:36:55 4 would have been?

18:36:58 5 A. I can only guess it's -- that it's an
18:37:00 6 internal -- internal document describing what the --
18:37:05 7 what will be the work and priorities we're going to
18:37:10 8 do in 2006. But that's a guess.

18:37:13 9 Q. Was it part of your job responsibilities
18:37:16 10 to assess and determine what the overall strategy
18:37:22 11 and objective for SAP Business One would be in 2006?

18:37:26 12 A. At a high level, yes, definitely.

18:37:30 13 Q. Okay. On that -- on that second slide,
18:37:33 14 there's a statement:

18:37:36 15 "Solidify foundation for volume business by
18:37:37 16 addressing the key legal and financial gaps and reduce
18:37:41 17 any liability risk."

18:37:43 18 Do you see that?

18:37:43 19 A. Yes, I do.

18:37:46 20 Q. Do you have an understanding of what that
18:37:49 21 would have meant when this was sent to you?

18:37:53 22 A. No. I can speculate, but not more than that.

18:37:59 23 Q. Well, if you'd received this in December 2005,
18:38:02 24 what would that have meant to you?

18:38:05 25 MR. STAR: Objection to form.

18:38:07 1 You can answer if you understand.

18:38:11 2 THE WITNESS: I mean, volume business was
18:38:13 3 how -- I mean, Business One was supposed to be the
18:38:15 4 volume business for SAP, so volume in terms of number
18:38:18 5 of customers. So solidify foundation for volume
18:38:21 6 business is to make it more sellable, lower the --
18:38:27 7 the total cost of ownership, et cetera. Again, it's
18:38:32 8 an assumption.

18:38:33 9 And as with any other product, obviously
18:38:37 10 there are always functionality gaps. In this type of
18:38:42 11 software, it could be referred to as legal and financial
18:38:45 12 gaps. So that -- that's my understanding. But, again,
18:38:50 13 it's speculation now. I don't recall what I understood
18:38:52 14 when I saw this, if I saw this.

18:38:57 15 Q. BY MR. LAMBERT: Is it your understanding
18:38:58 16 that the phrase "key legal and financial gaps" refer
18:39:03 17 to functionality issues with the software?

18:39:07 18 A. Yeah. Again, I don't remember what was meant
18:39:10 19 specifically here. But, again, if I have to read it
18:39:13 20 now, this is what I would understand.

18:39:19 21 Q. Do you under -- have an understanding of what
18:39:20 22 the phrase, quote, "reduce any liability risk," unquote,
18:39:24 23 refers to?

18:39:28 24 A. No. Not -- not more than in a generic --
18:39:32 25 generic understanding.

18:39:38 1 Q. What's your generic understanding?

18:39:40 2 A. You know, any prod -- any software product,
18:39:42 3 if it doesn't do what it's supposed to, theoretically
18:39:46 4 has a -- has a liability risk. And I assume this is
18:39:51 5 what was referred to here.

18:39:54 6 Q. Is it your understanding that, as of December
18:39:56 7 2005, there was existing liability risk with regard to
18:40:01 8 SAP Business One?

18:40:05 9 A. I don't know.

18:40:09 10 Q. Was that part of your job responsibility to
18:40:12 11 know whether there was any existing liability risk?

18:40:18 12 A. Theoretically speaking, yes. But it's --
18:40:20 13 you know, it's -- it's very tough to identify and know
18:40:25 14 exactly what -- since no product is ever 100 percent
18:40:30 15 right -- to know what they are. So, obviously, you
18:40:34 16 strive towards reducing and completing functionality
18:40:37 17 in a way that will reduce any liability. But it's very
18:40:41 18 difficult to know exactly what is the liability.

18:40:46 19 Q. The second page of that document -- or I'm
18:40:48 20 sorry -- the second bullet point on that page states:
18:40:54 21 "Supporting our current strategy 'protect and
18:40:58 22 growth.'"

18:41:00 23 Do you see that?

18:41:01 24 A. Yes.

18:41:01 25 Q. What did -- in -- in 2005, the "strategy

18:41:05 1 protect and growth," what did that mean?

18:41:08 2 A. Yeah. Actually, it was "protect and grow,"
18:41:12 3 not "growth."

18:41:14 4 But yeah, it's, you know, different names
18:41:16 5 to a very common strategy of, when you have a product
18:41:21 6 with existing customers, you take care of your
18:41:26 7 customers, which is to protect. And -- and then
18:41:27 8 you grow the business by selling to new customers.
18:41:30 9 That's what it meant. It was a slogan that we used
18:41:34 10 internally.

18:41:45 11 Q. Can you turn to the next page of that
18:41:47 12 document?

18:41:53 13 A. Sorry. Say it again.

18:41:55 14 Q. Turning to the next page of that document,
18:41:58 15 it's titled:

18:41:59 16 "Motivation for Upgrade."

18:42:01 17 A. Yes.

18:42:05 18 Q. There's a section on that -- on that slide
18:42:07 19 titled "Partners" in about -- in the middle of the page.

18:42:10 20 A. Uh-huh.

18:42:12 21 Q. And there's a series of bullet points, the
18:42:14 22 last one being:

18:42:16 23 "Addressing key pain points."

18:42:21 24 A. Uh-huh.

18:42:21 25 Q. Do you see what I'm referring to?

18:42:23 1 A. Yes.

18:42:23 2 Q. And one of those is -- one of those is
18:42:25 3 "performance."

18:42:28 4 And my question to you is -- is: What is
18:42:31 5 meant by "performance" in regards to this slide?

18:42:37 6 A. I don't know what was meant here. Again,
18:42:39 7 I can generically say what "performance" is. But I
18:42:43 8 don't know what -- what was meant here.

18:42:47 9 Q. Well, with regard to SAP Business One, is
18:42:51 10 "performance" a term that was regularly used in your
18:42:54 11 organization with respect to SAP Business One?

18:42:58 12 MR. STAR: Objection to form.

18:43:00 13 THE WITNESS: I don't -- I don't know how
18:43:02 14 to answer that. "Performance" is a -- is a generic
18:43:05 15 software term that is being used in any software
18:43:08 16 company.

18:43:11 17 Q. BY MR. LAMBERT: And what does it mean?

18:43:14 18 MR. STAR: Objection to form.

18:43:14 19 THE WITNESS: Yeah, it could mean a lot of
18:43:18 20 things. I -- I -- again, I don't know what was meant
18:43:21 21 here, this "performance."

18:43:35 22 Q. BY MR. LAMBERT: Would it -- would it be
18:43:37 23 fair to categorize the term "performance" as achieving
18:43:41 24 response times in a product?

18:43:47 25 A. Sometimes. Sometimes "performance" could

18:43:49 1 mean other things.

18:43:54 2 Q. Okay. We'll come back to that.

18:43:56 3 Do you recall performance being a key pain
18:44:01 4 point with respect to Business One in 2005?

18:44:04 5 A. No, I don't.

18:44:22 6 Q. Turn to Slide 6.

18:44:36 7 A. What's the title of the slide?

18:44:38 8 Q. "Cost Benefit Analysis for Wave 1 Topics."

18:44:42 9 A. Yeah.

18:44:45 10 Q. Can you tell me what this chart represents?

18:45:03 11 A. I don't really know. It's -- it's trying
18:45:05 12 to map the num -- the effort and category of each one
18:45:11 13 of the items that David here is referring to for --
18:45:16 14 I guess for the twenty -- 2006 release or development.

18:45:26 15 Q. I want to ask you a -- a -- go back to an
18:45:30 16 earlier point.

18:45:31 17 With regard to your organization at SAP,
18:45:37 18 you were the -- the head of the Small Business Solutions
18:45:41 19 organization; is that correct?

18:45:42 20 A. Yes. Correct.

18:45:45 21 Q. There was no one above you with -- in SAP
18:45:49 22 with respect to that organization?

18:45:51 23 A. No. The -- I was the head -- general manager
18:45:55 24 of that organization, reporting to -- to the board,
18:45:58 25 which is the executive management of SAP.

18:46:03 1 Q. Okay. And with respect to SAP Business One
18:46:08 2 development and testing, was there anyone at SAP that
18:46:10 3 was above you, or did you report directly to the board
18:46:13 4 on that?

18:46:14 5 A. The latter. I reported directly to the board
18:46:18 6 on that.

18:46:19 7 Q. Okay. Can you turn to Slide 13? It's titled:
18:46:33 8 "Analysis of key out-of-scope issues."

18:46:36 9 A. Yeah.

18:46:40 10 Q. First off, do you know what is meant by the --
18:46:42 11 the phrase "key out-of-scope issues"?

18:46:45 12 A. "Key" is, I guess, "important." And
18:46:50 13 "out-of-scope" is items that -- it's a term used for
18:46:53 14 items that are not going to make a certain release or
18:46:58 15 a certain product.

18:47:00 16 Q. Okay. So these are -- these are items that
18:47:03 17 aren't going to make the next release of SAP Business
18:47:06 18 One? Is that your understanding of this slide?

18:47:10 19 A. I don't know that -- at least in this
18:47:13 20 presentation, it says here that these are out-of-scope.
18:47:15 21 I don't know if this was a decision or a recommendation
18:47:19 22 or -- you know. So -- but that's what it says here.

18:47:23 23 Q. On Item 8 on this slide, there's a section
18:47:26 24 for "Data Archiving."

18:47:28 25 A. Uh-huh.

18:47:30 1 Q. Do you see that?

18:47:31 2 A. Yes.

18:47:32 3 Q. And that's -- the -- the reason says:

18:47:34 4 "Not legal...but needed to solve performance
18:47:36 5 issues."

18:47:37 6 Do you see that?

18:47:37 7 A. Yes.

18:47:40 8 Q. Do you recall a discussion in 2005 about the
18:47:43 9 lack of a data archiving function in SAP Business One?

18:47:48 10 A. No, I don't.

18:47:51 11 Q. Do you recall whether SAP Business One had
18:47:52 12 a data archiving function?

18:48:02 13 A. I don't recall. At some point -- maybe not
18:48:05 14 in 2005 -- I know the term was used and -- and -- and
18:48:08 15 was discussed. I don't remember exactly when. But
18:48:12 16 I don't know -- I don't remember if the -- the end
18:48:13 17 result was to include it in the product or not. I
18:48:16 18 don't recall.

18:48:19 19 Q. But -- but prior to that, there was not a
18:48:23 20 data archiving function; isn't that correct?

18:48:27 21 A. I don't know. I assume so, but I don't know.

18:48:31 22 Q. Okay. Could the lack of a data archiving
18:48:34 23 function hinder performance of the software?

18:48:40 24 A. Generically in software, if the data size
18:48:46 25 you're querying, which is what data applications are

18:48:50 1 doing, is large, performance would be affected. I
18:48:57 2 assume "data archiving" here is meant to move away
18:49:00 3 some of the data out of the system into an archive
18:49:04 4 so you can run against a smaller data set.

18:49:08 5 That's -- so, generically speaking, yes,
18:49:08 6 lack of archiving can affect performance. I don't
18:49:11 7 recall exactly what was the case here.

18:49:13 8 MR. LAMBERT: Can you turn to Tab 3? Let's
18:49:24 9 mark that as 244.

18:49:32 10 MR. GAMULKA: Can you -- can you identify it?

18:49:35 11 MR. LAMBERT: Certainly. It's a document
18:49:38 12 titled:

18:49:39 13 "B1 Performance Requirements."

18:49:41 14 SAP 13045.

18:49:50 15 (U. Ziv Exhibit 244 marked.)

18:49:55 16 MR. LAMBERT: Greg, do you have it?

18:50:07 17 MR. STAR: We do. We put together our own
18:50:11 18 binder like the one you sent to Israel but didn't send
18:50:13 19 to us. So we're good.

18:50:15 20 MR. LAMBERT: I e-mailed it to you. What's
18:50:17 21 the difference?

18:50:20 22 MR. STAR: Half hour before we started. There
18:50:22 23 we go. We're good.

18:50:27 24 Q. BY MR. LAMBERT: Mr. Ziv, please review 244
18:50:30 25 and let me know when you're ready.

18:50:32 1 A. (Examining.) Okay. Let's start. I'll review
18:50:54 2 it again per question.

18:50:58 3 Q. Well, have you seen Exhibit 244 before?

18:51:01 4 A. I don't remember.

18:51:06 5 Q. I'll represent to you that this was also
18:51:08 6 produced by SAP from your file.

18:51:10 7 Do you have any reason to doubt that it came
18:51:12 8 from your file?

18:51:13 9 A. No. No reason.

18:51:18 10 Q. Is this a document that you would have seen
18:51:20 11 in -- in the course of your employment with SAP?

18:51:24 12 A. Could have, but not necessarily. It's not --
18:51:26 13 yeah, could have.

18:51:33 14 Q. Do you know who -- up in the left-hand corner,
18:51:35 15 the author is stated as Ofer Oz.

18:51:41 16 Do you know that individual?

18:51:43 17 A. No, I don't.

18:51:51 18 Q. Also note that the date at the bottom portion
18:51:55 19 of this document is dated as January 4, 2006.

18:51:59 20 Do you see that?

18:52:00 21 A. I do.

18:52:09 22 Q. Could you turn to page 5?

18:52:14 23 A. Page 5?

18:52:16 24 Q. Yeah.

18:52:19 25 A. Yeah.

18:52:21 1 Q. First of all, if you don't specifically recall
18:52:23 2 seeing this document, do you know how you would have
18:52:26 3 obtained it?

18:52:28 4 A. No, I don't.

18:52:34 5 Q. Do you recall the need to test the
18:52:39 6 capabilities of SAP Business One being discussed
18:52:42 7 in January 2006?

18:52:46 8 A. No, I don't recall specific discussion.
18:52:48 9 Generically, all products are being tested all the time.
18:52:51 10 But I don't recall a January discussion about this.

18:52:58 11 Q. Under Item 1.1, there's a -- a discussion
18:53:04 12 or the "Executive Summary."

18:53:05 13 Do you see that?

18:53:06 14 A. Yes.

18:53:09 15 Q. It states:

18:53:09 16 "There are two major questions to be
18:53:11 17 answered:"

18:53:12 18 First one being:

18:53:13 19 "What is the system limitation in terms of
18:53:17 20 maximum concurrent users that can be supported on a
18:53:21 21 specific hardware and under a given business volume?"

18:53:23 22 Do you see that?

18:53:25 23 A. I do.

18:53:26 24 Q. Do you recall that being a specific question
18:53:28 25 that needed to be answered in January of 2006?

18:53:32 1 A. No, I don't. It's -- I don't recall
18:53:35 2 specific -- specifically. Again, it's -- any product
18:53:40 3 in any condition would want to know this. But no,
18:53:43 4 I don't recall specifics.

18:53:45 5 Q. Well, do you recall, prior to January 2006,
18:53:48 6 being aware of the maximum concurrent users that can
18:53:54 7 be supported on SAP Business One?

18:53:59 8 A. No, I don't. And -- and I think the
18:54:03 9 important -- I mean, there isn't a single maximum
18:54:06 10 number anyways. It really depends on the -- on the
18:54:09 11 situation, as it says here, on a specific hardware and
18:54:13 12 on business volume, et cetera. But I don't recall the
18:54:16 13 number.

18:54:18 14 Q. Do you recall whether any such tests had been
18:54:22 15 performed prior to January 4, 2006?

18:54:24 16 A. No, I don't recall. I assume they were, but
18:54:26 17 I don't recall.

18:54:29 18 Q. Why do you assume they were?

18:54:31 19 A. Because, as I said before, we were doing
18:54:34 20 testing throughout the lifecycle of the product. And
18:54:39 21 so I can only assume that we've done similar before
18:54:44 22 2006. But, again, I don't know this for a fact.

18:54:47 23 Q. Well, what -- isn't that information
18:54:49 24 information you would have liked to have had prior
18:54:56 25 to selling SAP Business One into the marketplace?

18:55:03 1 MR. STAR: Objection to form.

18:55:03 2 You can answer.

18:55:04 3 THE WITNESS: Yeah. I mean, obviously you
18:55:04 4 want to know --

18:55:05 5 Q. BY MR. LAMBERT: I can restate that if you
18:55:07 6 want.

18:55:07 7 A. No. I think I understand.

18:55:08 8 I mean, obviously you would want to know
18:55:14 9 how your -- your product is being -- standing to --
18:55:18 10 how the product stands to different testing. So yes.
18:55:24 11 The answer is "yes."

18:55:25 12 Q. So isn't it true also that this -- the testing
18:55:32 13 being referenced in Item 1 under the "Executive Summary"
18:55:36 14 should have been performed by SAP prior to January 2006?

18:55:44 15 MR. STAR: Objection to the form.

18:55:47 16 THE WITNESS: I don't know how to answer this.

18:55:49 17 Again, testing is something that software
18:55:50 18 products need to go -- to undergo continuously. No
18:55:57 19 product has ever -- ever goes under full testing. So
18:56:02 20 the -- the question is: What is done when? And I don't
18:56:05 21 recall exactly what -- when we have done different types
18:56:10 22 of system limitation testing, et cetera.

18:56:18 23 Q. BY MR. LAMBERT: Do you recall the core
18:56:19 24 underlying architecture of SAP Business One being
18:56:23 25 changed in any way during the time that you were the

18:56:27 1 head of Small Business Solutions?

18:56:34 2 A. I don't. I don't recall.

18:56:38 3 Q. So is it fair to say that the maximum
18:56:40 4 concurrent users that the software could support would
18:56:43 5 have remained the same from 2004 until you left in 2007?

18:56:51 6 A. I don't remember the numbers in '04 and '07.
18:56:54 7 But -- but the fact that the architecture was or wasn't
18:56:59 8 significantly changed doesn't mean scalability cannot be
18:57:04 9 changed. So, again, I don't recall the numbers. But --
18:57:06 10 but even without affecting architecture significantly,
18:57:10 11 you can improve scalability generically, you know, in
18:57:13 12 a generic fashion.

18:57:14 13 Q. Okay. My question to you is: During your
18:57:17 14 employment with SAP, from 2004 to 2007, were there
18:57:21 15 any changes with regard to SAP Business One that
18:57:26 16 significantly changed the maximum concurrent users
18:57:32 17 that can be supported by SAP Business One?

18:57:39 18 A. I don't recall exactly. I know we have worked
18:57:41 19 on -- on -- on the scalability of the system, and -- and
18:57:46 20 this is one aspect. But I don't recall the details.

18:57:51 21 Q. So is it your testimony you don't recall any
18:57:54 22 changes being made to SAP Business One that would have
18:57:58 23 increased the maximum concurrent users that could be
18:58:01 24 supported?

18:58:02 25 A. No. That's not what I said.

18:58:04 1 MR. STAR: Objection to form.

18:58:04 2 THE WITNESS: Yeah. What I said is that
18:58:07 3 I don't remember if there were or weren't any changes.
18:58:09 4 But scalability was one thing that was discussed and
18:58:16 5 on the table. So I can assume there were, but I don't
18:58:20 6 recall them.

18:58:22 7 Q. BY MR. LAMBERT: Okay. Turn to the next page.

18:58:36 8 A. Page 6?

18:58:38 9 Q. Yes.

18:58:39 10 A. Uh-huh.

18:58:43 11 Q. So the section titled "Business Need," and --
18:58:47 12 and it reads:

18:58:49 13 "With the rapid deployment of SAP B1, one
18:58:53 14 of the areas which customers want more information on
18:58:56 15 and seemingly complain consistently about is the product
18:58:58 16 performance, mostly to application scenarios that take
18:59:04 17 long time to complete. From SAP perspective, one of
18:59:07 18 the ways to handle this problem is to be familiar
18:59:12 19 with the product limitations in terms of performance
18:59:14 20 and scalability and supply deployment guidelines to
18:59:18 21 customers that" wish "to deploy B1 product." (As read.)

18:59:22 22 Do you see that statement?

18:59:23 23 A. I do.

18:59:25 24 Q. Do you recall that being discussed in your
18:59:27 25 organization in January 2006?

18:59:31 1 A. No, I don't.

18:59:35 2 Q. Is it your testimony that, as the head of SAP
18:59:38 3 business -- as the head of SAP Small Business Solutions,
18:59:41 4 you were not aware that there were frequent complaints
18:59:46 5 about product performance?

18:59:47 6 A. No. That's --

18:59:49 7 MR. STAR: Objection to form.

18:59:49 8 THE WITNESS: That's not what I said. I
18:59:51 9 said I don't recall that this was discussed.

19:00:02 10 Q. BY MR. LAMBERT: If you look down to
19:00:03 11 Section 1.3 --

19:00:05 12 A. Uh-huh.

19:00:05 13 Q. -- there's -- I'm not going to read the whole
19:00:13 14 thing 'cause it's lengthy. But there's a paragraph
19:00:15 15 starting:

19:00:16 16 "Performance tests have been conducted in
19:00:18 17 the past for B1."

19:00:21 18 A. Uh-huh.

19:00:22 19 Q. Do you see that?

19:00:23 20 A. Yeah.

19:00:24 21 Q. And it references:

19:00:26 22 "Standard performance methodology."

19:00:32 23 A. Yeah.

19:00:32 24 Q. Do you see that?

19:00:33 25 A. Uh-huh.

19:00:34 1 Q. What's meant by that phrase, "standard
19:00:36 2 performance methodology"?

19:00:39 3 A. I can only -- I can only read what it says
19:00:42 4 in the explanation, that "monitor resource utilization,"
19:00:45 5 and try to speculate on what that meant. I don't --
19:00:48 6 other than that, I don't know.

19:00:52 7 Q. You're not familiar with the standard
19:00:54 8 performance test methodology used on SAP Business One?

19:00:58 9 A. No. I don't -- I don't recall this as a
19:01:01 10 term that we've used. No.

19:01:06 11 Q. Do you recall the information -- the second
19:01:09 12 sentence:

19:01:10 13 "Lack of real-life customer profile
19:01:16 14 simulation."

19:01:17 15 A. No. I don't recall. Again, I can read it
19:01:19 16 and try to explain what I understand now. But I don't
19:01:24 17 recall this.

19:01:24 18 Q. Well, if you'd received this in January 4,
19:01:29 19 2006, what would you understand that information to
19:01:29 20 mean?

19:01:30 21 A. I don't know. I can tell you what I
19:01:32 22 understand now.

19:01:35 23 Q. Okay. What's your understanding now?

19:01:37 24 A. When -- referring to "real-life customer
19:01:40 25 profile simulation" is -- is saying that any product

19:01:47 1 is -- only performs in -- in a specific environment,
19:01:52 2 hardware setting, different type of data they are using,
19:01:56 3 different usage profiles that they have, et cetera.

19:02:04 4 And I assume -- again, this is what I
19:02:08 5 understand now -- that the first statement referred
19:02:10 6 to we're only doing standard testing and monitor how
19:02:13 7 the resources in -- in the -- in the software are --
19:02:16 8 are being affected. And the other is let's simulate
19:02:21 9 real-life scenarios of specific hardware, specific
19:02:24 10 use -- use cases, et cetera, and measure the product
19:02:27 11 under these environments. This is my understanding now.

19:02:31 12 Q. Okay. Well, is -- to your knowledge and
19:02:36 13 based upon reading this, those kinds of tests had not
19:02:40 14 been performed prior to January 4, 2006?

19:02:44 15 A. Only from reading this, I can only say that
19:02:48 16 what -- what it says here, that in the past, only the
19:02:53 17 standard performance methodology, whatever that meant,
19:02:56 18 was done.

19:02:59 19 Q. Is it your testimony that you don't remember
19:03:01 20 whether those tests were performed or that you would
19:03:04 21 not have known at the time whether those tests were
19:03:08 22 performed?

19:03:08 23 A. I don't remember if -- if I knew or not or
19:03:12 24 if they were performed or not.

19:03:16 25 Q. There's a statement down at the end of that

19:03:18 1 paragraph:

19:03:19 2 "According to the type of customers that B1
19:03:22 3 is targeting" --

19:03:23 4 Let me start over.

19:03:28 5 "In this context, this document specifies
19:03:31 6 the customer profiles according to B1 strategy, i.e.,
19:03:34 7 according to the type of customers that B1 is targeting.
19:03:38 8 This is in contrast to previous tests, where customer
19:03:41 9 profiles were based on actual deployments, which is
19:03:45 10 not always aligned with B1 strategy."

19:03:48 11 Do you see that?

19:03:49 12 A. I do.

19:03:49 13 Q. What's your understanding of -- of that sen --
19:03:50 14 or those two sentences I just read?

19:03:55 15 A. Let me read them again because they don't make
19:03:58 16 sense to me. (Examining.) I don't know. I don't know
19:04:10 17 what it meant.

19:04:13 18 Q. Well, let's focus on the -- on the last
19:04:18 19 sentence:

19:04:18 20 "Previous tests, where customer profiles
19:04:20 21 were based on actual deployments."

19:04:21 22 Is that a reference to SAP determining an
19:04:26 23 appropriate customer profile based upon real-life
19:04:29 24 implementations of the software?

19:04:36 25 A. Again, I can only speculate. I don't know

19:04:38 1 what -- what it meant. I can speculate that they
19:04:41 2 were saying that -- that the testing they've done
19:04:44 3 is on specific deployments and -- and not according
19:04:55 4 to whatever other guidelines. That's -- that's my
19:04:59 5 understanding. But, again, I don't -- it doesn't
19:05:01 6 completely make sense to me.

19:05:04 7 Q. Well, let me ask you a more basic question.

19:05:07 8 Is one of the methods that SAP used to
19:05:09 9 determine the appropriate deployment strategy for
19:05:15 10 Business One to review failed implementations of the
19:05:20 11 software at certain customer sites?

19:05:27 12 A. I don't recall specifically that this was
19:05:29 13 done. But it's a common methodology of how companies
19:05:36 14 look at their product limitations. But I don't recall
19:05:39 15 that this was done in -- in our case.

19:05:43 16 Q. Is it a common methodology employed by SAP
19:05:46 17 to your knowledge?

19:05:47 18 A. No, I don't know.

19:05:50 19 Q. How do you know it's a common methodology
19:05:53 20 then?

19:05:55 21 A. Because I've been in -- in this industry for
19:05:58 22 20 years. It's something that companies often do. But,
19:06:03 23 again, I don't recall if this was done in -- in our labs
19:06:06 24 or not.

19:06:20 25 Q. Turn to page 9.

19:06:27 1 A. Yes.

19:06:30 2 Q. There's a section, Section 3:

19:06:34 3 "Test Plan Requirements."

19:06:35 4 Do you see that on the middle?

19:06:37 5 A. Uh-huh. I do.

19:06:40 6 Q. There's a -- there's a reference to something
19:06:42 7 called "LoadRunner."

19:06:44 8 Do you see that?

19:06:45 9 A. Yes.

19:06:45 10 Q. Do you know what LoadRunner is?

19:06:49 11 A. Yeah. LoadRunner is -- is a performance
19:06:53 12 testing product by what used to be Mercury Interactive
19:06:57 13 maybe, a company called Mercury something, that is --
19:07:04 14 was a common tool for loading in a test environ, loading
19:07:12 15 the system with many users and many other aspects, so
19:07:15 16 to simulate load on the system.

19:07:20 17 Q. Okay. And could that program simulate load
19:07:25 18 with up to, let's say, 300 users?

19:07:31 19 A. Yeah. I mean, it can simulate load to much
19:07:35 20 more. I mean, it's a generic product used by -- by
19:07:37 21 all sorts of companies and all sorts of products. So
19:07:40 22 it doesn't have a -- at least I don't know that it has
19:07:44 23 a limitation on the number of users.

19:07:48 24 Q. Okay. Can you turn to page -- look at page 11
19:08:05 25 and 12 in unison.

19:08:15 1 A. 11 and 12?

19:08:16 2 Q. Yes.

19:08:18 3 A. Okay.

19:08:18 4 Q. Section 3.4, "Citrix Scalability Testing."

19:08:18 5 A. Uh-huh.

19:08:22 6 Q. On the second page, there's a bullet point,

19:08:24 7 the second bullet point referencing the -- the method

19:08:29 8 of -- of testing?

19:08:31 9 A. On what page? On page 12?

19:08:34 10 Q. Just -- yes.

19:08:36 11 A. Okay.

19:08:38 12 Q. And there's a reference on the second bullet

19:08:40 13 point:

19:08:40 14 "An alternative approach, which might

19:08:42 15 be better for this environment, is not use the

19:08:45 16 LoadRunner, but" whether -- "rather the UI recorder

19:08:49 17 tool." (As read.)

19:08:50 18 Do you know what that's referring to?

19:08:52 19 A. No, I don't. I don't recall.

19:08:57 20 Q. Do you know what the UI recorder tool is?

19:09:00 21 A. No. I -- I don't recall.

19:09:13 22 Q. Can you turn to page 15, the section titled:

19:09:28 23 "User Experience."

19:09:29 24 A. Yes.

19:09:32 25 Q. There's a -- several categories of user

19:09:35 1 experiences and application responsiveness?

19:09:39 2 A. Uh-huh.

19:09:40 3 Q. Do you recall ever seeing any -- do you
19:09:42 4 recall ever seeing anything like that before?

19:09:44 5 A. No. I don't recall whether I've seen it
19:09:47 6 or not.

19:09:49 7 Q. Well, there's -- there's two categories at
19:09:51 8 the bottom, "Poor" and "Failure."

19:09:54 9 A. Uh-huh.

19:09:54 10 Q. Do you see that?

19:09:55 11 A. I do.

19:09:56 12 Q. And under "Poor," it says:

19:09:58 13 "Screen updates are noticeable and latency
19:10:01 14 is increased. However, the user is still able to
19:10:04 15 function."

19:10:05 16 A. Yeah.

19:10:06 17 Q. Under "Failure," it says:

19:10:08 18 "The session becomes frozen or disconnected.
19:10:10 19 Therefore, the user cannot continue his tasks."

19:10:16 20 My question to you is: As the head of SAP
19:10:21 21 Small Business Solutions, is it fair to state that
19:10:26 22 SAP Business One should not be deployed where the
19:10:27 23 performance was either poor or a failure?

19:10:32 24 MR. STAR: Objection to the form.

19:10:34 25 THE WITNESS: I can only answer generically.

19:10:37 1 Obviously, we would like performance not to be poor
19:10:42 2 or a fail. But I don't know, you know, specifically.

19:10:55 3 Q. BY MR. LAMBERT: Go to page 17. There's a
19:11:07 4 Table 5.2, "Concurrent Users Conclusion."

19:11:11 5 A. Uh-huh. Yeah.

19:11:13 6 Q. Have you ever -- have you ever seen that
19:11:14 7 information before?

19:11:16 8 A. I don't recall.

19:11:20 9 Q. Is it your testimony that, as the head of
19:11:22 10 the SAP Small Business Solutions organization, you
19:11:25 11 don't recall seeing information relating to the --
19:11:27 12 the concurrent users that SAP Business One could
19:11:35 13 support?

19:11:36 14 MR. STAR: Objection to form. Lack of
19:11:37 15 foundation.

19:11:38 16 THE WITNESS: Yeah. As I said, I don't recall
19:11:39 17 seeing this -- this table here. I don't remember if
19:11:45 18 I've seen specific numbers or not at the time. But,
19:11:48 19 definitely, I don't recall whether I've seen this table.

19:11:52 20 Q. BY MR. LAMBERT: Based upon your position as
19:11:55 21 the head of SAP Small Business Solutions, are you able
19:11:57 22 to review and interpret the information on this table?

19:12:04 23 MR. STAR: Objection to the form. Lacks
19:12:05 24 foundation.

19:12:08 25 THE WITNESS: I can read what it says and not

19:12:10 1 more than that.

19:12:17 2 Q. BY MR. LAMBERT: Do you know if this table is
19:12:19 3 based upon actual test results that had been performed
19:12:23 4 prior to this date?

19:12:29 5 A. No, I don't. I can only read what it says
19:12:32 6 here. And it says:

19:12:33 7 "This table illustrates" how to -- "how the
19:12:35 8 conclusions" -- et cetera -- "can be reached." (As
19:12:36 9 read.)

19:12:36 10 So I don't know if it's actual data or not.
19:12:39 11 I don't know.

19:12:42 12 Q. Well, reading the table that you have in
19:12:44 13 front of you, is it fair to conclude that -- with a
19:12:47 14 total users of 35 concurrent users, SAP -- SAP Business
19:12:51 15 One did not perform satisfactorily?

19:12:56 16 MR. STAR: Objection to the form.

19:12:58 17 THE WITNESS: No, I don't think you can
19:13:00 18 conduct -- conclude this from -- first of all, I don't
19:13:02 19 know if it's real data or it's an illustration of how --
19:13:06 20 it says here how to conclude.

19:13:09 21 And, secondly, there are many more parameters
19:13:14 22 here, some -- you know, in the more parameters. So I --
19:13:19 23 I don't know exactly what else was testing -- what --
19:13:21 24 what tested here.

19:13:25 25 Q. BY MR. LAMBERT: Well, how else can you

19:13:27 1 interpret the far bottom right-hand corner: 35 users,
19:13:32 2 "User experience," "poor."

19:13:36 3 MR. STAR: Objection.

19:13:36 4 Q. BY MR. LAMBERT: What's your interpre --

19:13:37 5 MR. STAR: Lacks foundation.

19:13:39 6 Q. BY MR. LAMBERT: What's your interpretation
19:13:41 7 of that box?

19:13:42 8 MR. STAR: Same objection.

19:13:43 9 THE WITNESS: Yeah. Again, as I said, I don't
19:13:47 10 know if it's real data or not or it's illustrative.

19:13:53 11 And, secondly, there's a row here that says
19:13:56 12 "More parameters," which mean that under -- if this
19:14:00 13 was real testing, under these conditions in the "More
19:14:04 14 parameters," one can -- can assume that, under 35, that
19:14:08 15 this specific test was poor. But, again, I don't know
19:14:13 16 if it was a real test or not. So I cannot comment on
19:14:17 17 that.

19:14:18 18 THE VIDEOGRAPHER: Excuse me, Counsel. We
19:14:20 19 have five minutes left on the tape.

19:14:23 20 Q. BY MR. LAMBERT: Okay. Can you turn to
19:14:24 21 page 25?

19:14:27 22 A. Sure. Yes.

19:14:36 23 Q. There's a Section 6.5, "Concurrent Users."

19:14:39 24 A. Uh-huh.

19:14:42 25 Q. And -- and there's a statement with regard

19:14:44 1 to the testing of concurrent users, that they should
19:14:47 2 be tested in intervals of five up until 100.

19:14:52 3 A. Yes.

19:14:52 4 Q. Do you see that?

19:14:53 5 A. Yeah, I do.

19:14:55 6 Q. Does that mean that this -- does that mean
19:14:57 7 that Business One should never be deployed in an
19:15:00 8 environment where there exceeds 100 users?

19:15:04 9 MR. STAR: Objection to the form.

19:15:07 10 THE WITNESS: No. It just says what testing
19:15:09 11 methodology in this case was. It doesn't say anything
19:15:12 12 about deployments.

19:15:14 13 Q. BY MR. LAMBERT: Well, in this -- in this
19:15:16 14 test at least, it's not going to be -- Business One
19:15:18 15 is not going to be tested under any circumstances in
19:15:22 16 which the concurrent users exceeds 100; is that correct?

19:15:28 17 MR. STAR: Objection to the form.

19:15:29 18 THE WITNESS: No. I don't think that's
19:15:31 19 correct. I think -- I mean, maybe other than the --
19:15:32 20 the words "under any circumstances."

19:15:36 21 In this specific test, this test the
19:15:38 22 methodology was to test 1, 2 -- 0, 1, 2, 5, and then
19:15:44 23 in increments of five up until 100. But I don't
19:15:47 24 know what other tests were -- were done at the time.

19:15:51 25 Q. BY MR. LAMBERT: But at least with regard

19:15:52 1 to this specific test, we can agree that it would not
19:15:55 2 be tested -- Business One would not be tested in excess
19:15:59 3 of 100 users; correct?

19:16:00 4 A. In this specific --

19:16:01 5 MR. STAR: Objection to the form.

19:16:01 6 THE WITNESS: Yeah. In this specific test,
19:16:03 7 it says here "up until 100."

19:16:09 8 Q. BY MR. LAMBERT: Do you recall whether the
19:16:10 9 tests called out in Exhibit 244 were ever actually
19:16:17 10 performed?

19:16:20 11 A. No, I don't.

19:16:33 12 Q. Okay. We can take a break to change the tape.

19:16:36 13 A. All right.

19:16:37 14 THE VIDEOGRAPHER: This is the end of Tape
19:16:38 15 No. 2 in the video deposition of Udi Ziv. Going off
19:16:42 16 the record. The time is 7:15.

19:16:45 17 (Recess from 7:15 p.m. to 7:27 p.m.)

19:28:34 18 THE VIDEOGRAPHER: This is the beginning of
19:28:35 19 Tape No. 3 in the video deposition of Udi Ziv. Going
19:28:41 20 back on the record. The time is 7:27.

19:28:48 21 Q. BY MR. LAMBERT: Mr. Ziv, continuing: Do
19:28:50 22 you know the individuals -- the names of the individuals
19:28:53 23 responsible for inventing TopManage or what ultimately
19:28:58 24 became SAP Business One?

19:29:02 25 A. The name -- the names of the individuals

19:29:03 1 responsible for what? Sorry.

19:29:06 2 Q. For -- for developing or inventing, for lack
19:29:10 3 of a better word, TopManage.

19:29:22 4 A. I don't know exactly who would be the inventor
19:29:26 5 kind of of TopManage. Not sure exactly what you mean.

19:29:36 6 Q. Do you know the name Shai Agassi?

19:29:38 7 A. Yes, of course.

19:29:39 8 Q. Is Mr. Agassi one of the developers of
19:29:45 9 TopManage?

19:29:47 10 A. No. No. Shai Agassi was the -- I don't
19:29:54 11 remember even exactly what he was.

19:29:56 12 But the -- the original product of what
19:29:58 13 I called before Menahel, which became TopManage, was
19:30:03 14 started at a company called Quick Soft. And Shai was
19:30:08 15 one of the founders of that company. So -- but I --
19:30:12 16 I don't know that he was a developer of that product.
19:30:16 17 I don't remember.

19:30:19 18 Q. Okay. Did you know at one point who developed
19:30:24 19 the product and you just don't recall now?

19:30:27 20 A. Yeah. I used to know. I don't recall. I
19:30:29 21 mean, there are many developers obviously throughout
19:30:32 22 the years. But I think you referred to specifically
19:30:36 23 the "inventor." And I -- I don't really know who that
19:30:39 24 was.

19:30:43 25 Q. Okay. Did you have any involvement with SAP

19:30:47 1 Business One or -- or TopManage or any prior iterations
19:30:53 2 of the software prior to joining SAP?

19:30:57 3 A. Yeah. Up until -- I don't recall when it
19:31:00 4 was started. But the same company, Quick Soft, that
19:31:05 5 I referred to, I was part of that company as well. And
19:31:08 6 in 2000 and -- sorry. In 1996, I think we split it into
19:31:14 7 two companies. One became Top Tier and the other became
19:31:14 8 Menahel, which was responsible for that product that
19:31:23 9 later became TopManage or Business One.

19:31:27 10 Q. Okay. So just so I'm clear, you were -- you
19:31:29 11 were an employee of Quick Soft, which is the entity that
19:31:35 12 originally developed what would later become Business
19:31:40 13 One?

19:31:41 14 A. Correct.

19:31:41 15 Q. Is that correct?

19:31:41 16 A. Correct. Yes.

19:31:43 17 Q. Okay. And Quick Soft then became part of --
19:31:47 18 or Quick Soft was split into two companies?

19:31:52 19 A. Yes. Into Top Tier and into what was called
19:31:57 20 Menahel, which was the company that took the product
19:32:01 21 Menahel, later Business One, with it.

19:32:05 22 Q. Okay. When it was split, did you go with
19:32:08 23 Menahel, or did you go with Top Tier?

19:32:11 24 A. Top Tier. I stayed with Top Tier.

19:32:14 25 Q. Okay. Prior to the split, did you have any

19:32:17 1 involvement with SAP Business One or what ultimately
19:32:20 2 became SAP Business One?

19:32:24 3 A. Yeah. We were a small company. We shared
19:32:27 4 what is called codebase. We shared some code between
19:32:31 5 this product and other products. So from that
19:32:33 6 perspective, yes.

19:32:35 7 Q. Were you aware of the target market for
19:32:41 8 the software when it was being developed and sold by
19:32:46 9 Quick Soft?

19:32:50 10 A. No. I don't recall whether I was aware or
19:32:52 11 not this many, many years ago. I don't recall.

19:32:59 12 Q. Do you have a general understanding of what
19:33:01 13 the target market was for that software when it -- when
19:33:05 14 it was being sold by Quick Soft?

19:33:08 15 A. No, I don't.

19:33:13 16 Q. Are you able to say whether it was greater
19:33:16 17 or less than 30 concurrent users?

19:33:19 18 A. I don't remember.

19:33:22 19 Q. How about when the product was being sold
19:33:25 20 by Menahel, do you have an understanding as to the
19:33:33 21 target market for the software when it was being sold
19:33:35 22 by Menahel?

19:33:36 23 A. No, I don't.

19:33:50 24 Q. Are you familiar with the implementation of
19:33:52 25 SAP Business One at Hodell-Natco?

19:33:57 1 A. No, I'm not. Other than what I read two weeks
19:34:00 2 ago, no, I wasn't aware.

19:34:05 3 Q. Well, is it fair to say that, in around 2007,
19:34:08 4 you were aware that Hodell-Natco had implemented SAP
19:34:13 5 Business One and -- and was having some issues with
19:34:16 6 the implementation?

19:34:17 7 A. I don't remember the dates. But from what
19:34:20 8 I've read in -- in the documents a couple of weeks ago,
19:34:24 9 yeah, I -- it says -- it said there that I was aware.

19:34:38 10 Q. Do you have any independent recollection
19:34:40 11 of when you first became aware of the installation
19:34:43 12 at Hodell-Natco?

19:34:46 13 A. No. Actually, when I saw the -- the
19:34:49 14 documents, I -- I didn't recall any of that. So --
19:34:53 15 so I guess the only thing I can say is what I've read --
19:34:57 16 briefly read two weeks ago.

19:35:00 17 Q. When did you first learn that a lawsuit had
19:35:03 18 been filed by Hodell-Natco against SAP?

19:35:10 19 A. I don't remember the date. A few months ago,
19:35:11 20 I guess.

19:35:15 21 Q. Okay. Can you turn to a document that's been
19:35:25 22 previously marked as Exhibit 69?

19:35:25 23 (Court reporter clarification.)

19:35:25 24 THE WITNESS: No, they're there. They just
19:35:25 25 turned the camera away.

19:35:25 1 Greg, are you there?

19:35:25 2 MR. KELLEHER: This is Joe.

19:35:25 3 THE WITNESS: Okay.

19:35:40 4 MR. KELLEHER: We're -- we're still here.

19:35:45 5 THE WITNESS: Okay. No, we can't --

19:35:46 6 MR. GAMULKA: We can't see you.

19:35:46 7 THE WITNESS: We can't see you. We see an

19:35:48 8 empty room. But --

19:35:51 9 MR. KELLEHER: Yeah, I know. I'm sorry. We

19:35:51 10 moved the camera away so we could have a bit of lunch.

19:35:54 11 THE WITNESS: Enjoy.

19:35:56 12 MR. LAMBERT: It must be nice.

19:35:58 13 THE WITNESS: Or not.

19:36:00 14 MR. GAMULKA: Looking for 69?

19:36:04 15 MR. LAMBERT: Correct.

19:36:05 16 MR. GAMULKA: Okay. Got it.

19:36:08 17 THE WITNESS: Thank you.

19:36:12 18 Q. BY MR. LAMBERT: Mr. Ziv, if you -- if you

19:36:15 19 could review Exhibit 69 and let me know when you're

19:36:19 20 finished.

19:36:32 21 A. (Examining.) Okay. I'm good.

19:39:06 22 Q. Exhibit 69 is a series of e-mails in or around

19:39:10 23 April 12, 2007.

19:39:13 24 Is this one of the documents you reviewed in

19:39:15 25 preparation for your deposition?

19:39:17 1 A. Not 100 percent sure, but I think I did.

19:39:22 2 Q. Okay. Having reviewed Exhibit 69, does that
19:39:27 3 refresh your memory at all about receiving an e-mail
19:39:31 4 from Dan Lowery on April -- in April 2007, asking for
19:39:36 5 help with respect to the implementation of Business One
19:39:39 6 at Hodell?

19:39:41 7 A. No, it doesn't. I mean, I remember reading
19:39:43 8 this two weeks ago. But it didn't -- it didn't ring
19:39:49 9 a bell when I read it.

19:39:51 10 Q. Okay. So it's your testimony you have no
19:39:53 11 recollection whatsoever of addressing problems with
19:39:56 12 the installation of Business One at Hodell in April
19:39:58 13 of 2007?

19:40:02 14 A. Correct. Other than what I've read in these
19:40:05 15 e-mails a couple weeks ago.

19:40:10 16 Q. Well, looking starting from the back,
19:40:15 17 obviously, the -- the initial e-mail is an e-mail from
19:40:19 18 Dan Lowery to yourself April 12 -- April 11, 2007, at
19:40:25 19 4:34 p.m.

19:40:27 20 Do you see that?

19:40:27 21 A. Yes, I do.

19:40:30 22 Q. And he's asking for your help answering some
19:40:34 23 questions with respect to the installation of Business
19:40:37 24 One at Hodell; correct?

19:40:42 25 A. It seems that way. Yes.

19:40:44 1 Q. Okay. And then do you know who Dan Lowery is?

19:40:49 2 A. No, I don't.

19:40:51 3 I -- I do now, but -- from reading this.

19:40:54 4 But I -- I don't other than that.

19:40:57 5 Q. Okay. There's a reply to that e-mail from
19:41:03 6 Dan Kraus.

19:41:05 7 Do you see that?

19:41:05 8 A. Yes, I do.

19:41:07 9 Q. Do you know who Dan Kraus is?

19:41:11 10 A. Yes, I know who Dan Kraus is. I don't
19:41:12 11 remember exactly what was his role. But he was an
19:41:14 12 employee of, I think, SAP America at the time.

19:41:21 13 Q. How about the other individuals on that
19:41:24 14 e-mail, Paul Killingsworth and Michael Sotnick?

19:41:29 15 A. I don't recall who Paul was. Michael Sotnick
19:41:30 16 I remember -- again, he was part of -- I think of SAP
19:41:33 17 America, as far as I recall.

19:41:38 18 Q. Did any of those individuals report to you?

19:41:41 19 A. No. They -- well, I don't recall who Paul
19:41:45 20 was. So Paul may have, but I don't think so. And the
19:41:49 21 others definitely didn't.

19:41:51 22 Q. Did you have any authority over those two
19:41:53 23 individuals?

19:41:55 24 A. No.

19:42:00 25 Q. The e-mail in the middle of that page is an

19:42:02 1 e-mail from yourself to Dan Kraus and -- and some other
19:42:07 2 people replying to Mr. Kraus' e-mail; correct?

19:42:15 3 A. Correct. Yes.

19:42:18 4 Q. Okay. Are all the individuals on your e-mail
19:42:21 5 and Mr. Kraus' e-mail SAP employees?

19:42:28 6 A. Again, other than Paul, which -- killing --
19:42:29 7 Killingsworth, which I don't recall who he was, the
19:42:35 8 others are SAP employees. Yes.

19:42:38 9 Q. What was Dirk Boessmann's position with SAP?

19:42:43 10 A. Dirk was reporting to me. If I recall
19:42:47 11 correctly at the time, he was responsible for what
19:42:49 12 we call IBD develop -- IBD --

19:42:51 13 (Court reporter clarification.)

19:42:53 14 THE WITNESS: "IBD," "install base
19:42:54 15 development."

19:42:55 16 -- basically responsible for the products
19:43:00 17 that were already released versus other people that
19:43:03 18 were responsible for the new products that were in --
19:43:04 19 the versions of the product that was -- that were
19:43:07 20 in development.

19:43:08 21 Q. BY MR. LAMBERT: Okay. How about Niels
19:43:14 22 Stenfeldt?

19:43:16 23 A. Niels. Niels Stenfeldt was part of the SAP
19:43:21 24 channel organization, working with partners. I don't
19:43:27 25 exactly recall what his role was.

19:43:32 1 Q. Neither of those two individuals were included
19:43:35 2 on Mr. Kraus' e-mail.

19:43:36 3 Do you recall why you included them on your
19:43:40 4 e-mail?

19:43:44 5 A. No. I don't recall sending it. So I don't
19:43:46 6 know what I had in mind at the time. Dirk Boessmann
19:43:51 7 was responsible for any customer issue that went back
19:43:54 8 to the product team. So that's natural. Niels, I don't
19:43:58 9 recall.

19:44:03 10 Q. You make the statement:

19:44:08 11 "I honestly do not know what to tell you.
19:44:11 12 Someone had sold to the wrong customer, which is way
19:44:14 13 above any sane B-1 sweet spot (120 users!!!)."

19:44:20 14 Do you see that?

19:44:20 15 A. Yes, I do.

19:44:25 16 Q. Isn't it true that the sale of SAP Business
19:44:28 17 One to a -- to a company with 120 users is, in fact,
19:44:33 18 way above any sane sweet spot for the product?

19:44:36 19 A. That's what it says here. I don't know if
19:44:38 20 it's true or not. But that's what I wrote.

19:44:42 21 Q. You wouldn't have written it if it wasn't
19:44:45 22 true, would you have?

19:44:46 23 A. You know, there's always context to -- to
19:44:48 24 anything you write. So I don't -- it's hard to say
19:44:50 25 what was the April 12th, 2007, context. So I don't

19:44:58 1 know.

19:44:59 2 Q. Are you saying that that information -- are
19:45:01 3 you saying that your e-mail could have been supplying
19:45:04 4 false information?

19:45:05 5 MR. STAR: Wes, he wasn't finished with his
19:45:07 6 answer. He was still speaking.

19:45:12 7 THE WITNESS: Yeah.

19:45:12 8 MR. LAMBERT: I'm sorry. There's a little
19:45:14 9 bit of a lag here. I didn't understand that.

19:45:17 10 THE WITNESS: Yeah. So -- so no, definitely
19:45:18 11 no, not false information. But as I said, there's
19:45:21 12 always context to what you write. And I don't know
19:45:24 13 what the context was. That's all I can say.

19:45:29 14 THE COURT REPORTER: Mr. Star --

19:45:39 15 Q. BY MR. LAMBERT: When you said the April
19:45:39 16 12th --

19:45:39 17 THE COURT REPORTER: Excuse me. Excuse me.

19:45:39 18 Mr. Star, I just need you to speak up, please,
19:45:39 19 when you're speaking.

19:45:39 20 MR. STAR: Sure.

19:45:39 21 THE COURT REPORTER: Thank you. Sorry.

19:45:48 22 Q. BY MR. LAMBERT: Do you have any knowledge
19:45:48 23 of any information which would allow you to say that
19:45:55 24 Business One -- that the sweet spot for Business One --
19:45:59 25 the sane sweet spot for Business One was not 120 users?

19:46:06 1 A. Repeat the question, please.

19:46:10 2 Q. Perhaps I -- yeah. I think I worded that
19:46:10 3 pretty poorly. So let me back up.

19:46:12 4 Do you have any -- do you have knowledge of
19:46:14 5 any information which would lead you -- lead you to
19:46:17 6 believe that that statement is not true, that statement
19:46:20 7 being "way above any sane B1 sweet spot"?

19:46:26 8 A. No, I don't. But, again, as I said, it
19:46:28 9 depends on a lot of context, which, you know, just
19:46:32 10 by reading -- skimming through the document here,
19:46:35 11 there's a lot of other context around this specific
19:46:40 12 customer. But, you know, I don't have any reason to
19:46:42 13 think this was not true.

19:46:46 14 Q. Do you know how long in between receiving
19:46:50 15 this e-mail from Mr. Kraus and replying it took you
19:46:56 16 to come to that conclusion?

19:47:00 17 A. No. I don't know. I can't even -- looking
19:47:04 18 at the time stamps, I can't even do this because e-mail
19:47:10 19 systems convert time stamps to different time zones.
19:47:13 20 So I don't know. I don't know.

19:47:17 21 Q. Do you know what information you used to reach
19:47:20 22 that conclusion?

19:47:21 23 A. No. I don't recall.

19:47:30 24 Q. Do you recall whether your conclusion that
19:47:32 25 this is the wrong customer ever changed?

19:47:39 1 A. Repeat the question, please.

19:47:42 2 Q. Do you recall your conclusion in this first
19:47:46 3 sentence of your e-mail ever changing?

19:47:51 4 A. No. I don't recall either way whether it
19:47:54 5 changed or not changed.

19:48:00 6 Q. Do you know or have an understanding as to
19:48:03 7 the sane sweet spot for Business One at or around this
19:48:09 8 time?

19:48:11 9 A. No. I don't recall, you know, what were
19:48:13 10 the -- the numbers and what we -- you know, what would
19:48:18 11 be referred to here as "sane sweet spot." No.

19:48:27 12 Q. You make the statement:

19:48:28 13 "I should probably direct them to move away
19:48:30 14 from this issue and concentrate on the volume of regular
19:48:35 15 customers."

19:48:35 16 Do you see that in the last sentence of that
19:48:37 17 paragraph?

19:48:37 18 A. I do.

19:48:39 19 Q. What did you mean by that?

19:48:42 20 A. Again, I don't remember exactly what I meant
19:48:46 21 over five years ago. But I can -- just reading it now,
19:48:50 22 I can try to explain at least what I understand now.

19:48:54 23 The Business One was a volume product, meaning
19:48:59 24 going to many, many customers. And by definition, when
19:49:02 25 you have such product, you want to deal with more common

19:49:06 1 problems that affect more of your customers than are --
19:49:09 2 than specific, very unique situations.

19:49:12 3 In this case, again, I didn't recall this
19:49:15 4 before. But reading this e-mail thread, there was a
19:49:19 5 very specific, very verticalized partner add-on that
19:49:23 6 was part of the system. And, therefore, this was a
19:49:26 7 very unique situation. And, generically, one would
19:49:30 8 want the people to work on -- on the volume or the --
19:49:33 9 the more common type of customers.

19:49:39 10 Q. Okay. I don't see anything in your e-mail
19:49:42 11 relating to the vertical solution. But -- but I do
19:49:48 12 see it in reference to the number of users.

19:49:52 13 Is it fair to say that that's -- that's the
19:49:54 14 issue that you were primarily focused on, is the fact
19:49:58 15 that they had been sold 120 users?

19:50:02 16 A. It's hard to say from this. This was -- you
19:50:05 17 know, I -- I write hundreds of e-mails a day. This was
19:50:08 18 probably an easy way to say why I don't think it's a --
19:50:11 19 it's a -- it's a regular or common customer. But I --
19:50:13 20 I don't know what I had in mind.

19:50:17 21 Q. Okay. You have two recommendations down at
19:50:23 22 the bottom; correct?

19:50:24 23 A. Uh-huh.

19:50:25 24 Q. The first one is to:

19:50:26 25 "Go for reimbursement."

19:50:30 1 Do you see that?

19:50:31 2 A. Yes, I do.

19:50:36 3 Q. Did you have the authority to -- to issue
19:50:40 4 a reimbursement at this point?

19:50:42 5 A. No, I did not.

19:50:45 6 Q. Who had that authority?

19:50:49 7 A. I don't even know exactly. But I assume
19:50:51 8 it would be in the partner organization, which was
19:50:54 9 the organization working with -- with partners that
19:51:00 10 were selling the product.

19:51:04 11 Q. As the head of the organization that oversaw
19:51:09 12 SAP Business One, why did you not have that authority?

19:51:12 13 A. It's just how companies are -- or SAP at the
19:51:15 14 time was organized. My organization was -- was called
19:51:19 15 a -- a PTU, a product and technology unit. And then
19:51:24 16 the -- there are other functions responsible for -- for
19:51:28 17 sales, direct or indirect sales. And -- and they were
19:51:31 18 the only ones who had the authority to -- to sell or
19:51:36 19 to reimburse -- and to reimburse, I guess.

19:51:44 20 Q. Where was the organization responsibility
19:51:46 21 for sales located?

19:51:49 22 A. It was all over. Sales is -- sales was
19:51:54 23 built regionally. So there was an SAP America
19:51:59 24 sales organization, which had a Business One
19:52:03 25 channel organization within it. There were similar

19:52:07 1 organizations in the other geographies.

19:52:09 2 And there was a central -- central channel
19:52:13 3 sales for Business One, kind of corporate, which I
19:52:18 4 don't recall where. I mean, I think Niels -- the
19:52:20 5 person when you asked -- Niels Stenfeldt reported to
19:52:23 6 that organization. And, again, they were geograph --
19:52:26 7 geographically all over the place, in the U.S., in
19:52:30 8 Europe, and in other places.

19:52:32 9 Q. Do you know whether a reimbursement actually
19:52:42 10 occurred?

19:52:43 11 A. No, I don't.

19:52:47 12 Q. Your second bullet point is:

19:52:50 13 "We debrief the whole process that got us
19:52:53 14 to having this customer in the first place."

19:52:55 15 A. Yes.

19:52:56 16 Q. Do you know what you meant by that?

19:52:59 17 A. Yeah. I mean, I can read it now, and --
19:53:01 18 I don't know what I meant at the time.

19:53:04 19 But I can understand now that, if this is
19:51:58 20 indeed not -- the combination of what the customer
19:52:02 21 is using is -- is not a right fit for the product,
19:52:05 22 we need to understand how the product was sold or --
19:52:08 23 or how the -- more importantly, how can we avoid similar
19:52:13 24 situations in the -- in the future. I assume this is
19:52:14 25 what I meant.

19:52:17 1 Q. Did you follow up on that recommendation and
19:52:19 2 ensure that that situation was analyzed?

19:52:24 3 A. I don't remember that I did. Maybe. Maybe
19:52:27 4 not.

19:52:27 5 Q. If you'd turn to the first page, which is
19:52:38 6 Mr. Kraus' response to your e-mail.

19:52:43 7 A. Yes. First page; right?

19:52:47 8 Q. Correct. SAP 5571.

19:52:51 9 A. 5571.

19:52:52 10 Q. There's an e-mail from Dan Kraus?

19:52:54 11 A. Yeah. Okay. Second page.

19:52:55 12 Q. Oh, I'm sorry. Yeah, you're right. It is
19:53:01 13 the second page. Dan Kraus replies to you:

19:53:03 14 "Udi, this customer was sold in 2004 before
19:53:06 15 there was any announced or understood issue."

19:53:10 16 Do you see that statement?

19:53:11 17 A. Uh-huh. I do.

19:53:14 18 Q. What's the "announced or understood issue"
19:53:17 19 he's referring to?

19:53:18 20 A. I have no clue. I don't know. I mean, he
19:53:21 21 says --

19:53:22 22 Q. Do you recall there being --

19:53:24 23 A. He says later on:

19:53:25 24 "The issue has been," et cetera.

19:53:27 25 But I don't recall that.

19:53:30 1 Q. You don't recall what specific announced
19:53:34 2 issue he's referring to?

19:53:39 3 A. I don't recall. No.

19:53:42 4 Q. A couple of e-mails up at the top is your
19:53:47 5 reply to Dan Kraus; correct?

19:53:51 6 A. A couple of e-mails?

19:53:54 7 Q. At the very top of that page, an e-mail from
19:53:56 8 yourself --

19:53:56 9 A. Yeah.

19:53:56 10 Q. -- to --

19:53:56 11 A. Yeah, yeah.

19:53:57 12 Q. -- Dan Kraus --

19:53:58 13 A. I see it.

19:53:59 14 Q. -- at -- at three -- at 3:12 p.m.?

19:54:02 15 A. Uh-huh.

19:54:04 16 Q. And you make the statement:

19:54:05 17 "Too bad we didn't stop the implementation
19:54:08 18 of B1 before it started."

19:54:10 19 A. Yes.

19:54:10 20 Q. Do you have any recollection of making that
19:54:12 21 statement?

19:54:12 22 A. No, I don't.

19:54:13 23 Q. Do you recall whether you understood at the
19:54:17 24 time SAP had sufficient information to know whether the
19:54:23 25 implementation should be -- should have been stopped?

19:54:26 1 A. No. I -- I -- I don't know. Obviously,
19:54:29 2 it's a frustrated answer. But I don't know that I
19:54:33 3 knew whether we had the information before or not.

19:54:43 4 Q. Can you turn to the -- the very first page
19:54:45 5 of that document, SAP 5570?

19:54:50 6 A. Uh-huh.

19:54:50 7 Q. There's some internal communications between
19:54:54 8 Dan Kraus and Michael Sotnick they didn't copy you on,
19:54:58 9 but they're referencing your e-mails.

19:55:01 10 A. Uh-huh.

19:55:01 11 Q. Correct?

19:55:02 12 A. It seems that way. Yes.

19:55:05 13 Q. Yeah. Do you know what Mr. Sotnick meant
19:55:12 14 by the statement in -- in the e-mail at the very top:

19:55:14 15 "Too bad I didn't know the limitations of
19:55:17 16 the product in 2004."

19:55:20 17 A. No. You'd have to ask him. I don't -- I
19:55:22 18 have no clue.

19:55:25 19 Q. Well, as -- as the head of the small business
19:55:32 20 organization for SAP, is it -- is it your belief that
19:55:35 21 information concerning limitations of Business One
19:55:38 22 was not communicated to Mr. Sotnick and Mr. Kraus'
19:55:43 23 organization?

19:55:45 24 A. I don't know. I mean, obviously, there were
19:55:51 25 different types or different communication on an ongoing

19:55:57 1 basis between solution marketing and -- and -- and the
19:56:00 2 field, which is where Sotnick and Mike -- and Dan Kraus
19:56:04 3 worked. But I don't know exactly what he's referring
19:56:08 4 to as "limitation."

19:56:12 5 Q. Well, whose responsibility is it to ensure
19:56:16 6 that information concerning a product limitation is
19:56:20 7 communicated to the sales field?

19:56:26 8 A. It's -- there's a flow of information that
19:56:31 9 starts from the product organization, goes -- or
19:56:36 10 development organization and testing, goes into
19:56:38 11 product or solution management, and then goes into
19:56:41 12 solution marketing, which is the one communicating
19:56:43 13 to the field.

19:56:46 14 Q. Okay. Were all of those, I guess, branches
19:56:52 15 for SAP Business One under your oversight?

19:56:56 16 A. No. The -- the last mile, the solution
19:57:00 17 marketing, was not in my organization. That was a
19:57:02 18 separate organization within SAP.

19:57:06 19 Q. And -- and just so I'm correct, your
19:57:09 20 organization would actually develop and compile
19:57:14 21 the information and provide it to the marketing
19:57:17 22 organization, who would then communicate it to
19:57:19 23 the field?

19:57:20 24 Is that a correct summation?

19:57:22 25 A. Yeah. That's the normal flow. Yes.

19:57:26 1 Q. Okay. Is -- to your knowledge, was there
19:57:34 2 ever a break in the flow of that communication that
19:57:37 3 would have resulted in Mr. Sotnick and Mr. Kraus not
19:57:40 4 being provided with the limitations of SAP Business
19:57:42 5 One at any given point in time?

19:57:48 6 A. No. I don't know of any break of -- of this
19:57:50 7 flow. I don't recall that there was or wasn't.

19:57:55 8 Q. Okay. He -- Mr. Sotnick answers the e-mail
19:57:58 9 with a suggested response to you, one of which is that
19:58:05 10 there is no mechanism for him to execute \$100,000
19:58:12 11 reimbursements.

19:58:14 12 Do you see that?

19:58:15 13 A. Yeah, I do.

19:58:17 14 Q. Do you know what that referred to?

19:58:19 15 A. Only what I can understand in English,
19:58:21 16 basically saying he doesn't have the budget or the
19:58:26 17 mechanism to -- to reimburse.

19:58:32 18 Q. And -- and he also suggested leaving the door
19:58:36 19 open for you to elect to reimburse the customer.

19:58:40 20 Do you see that?

19:58:41 21 A. Yeah, I do.

19:58:43 22 Q. Was that something that you could have done?

19:58:48 23 A. Theoretically speaking, I could transfer
19:58:52 24 budget to the right organization that would reimburse.
19:58:54 25 Yes. Theoretically, yes.

19:59:00 1 Q. Do you know whether you did that?

19:59:03 2 A. I don't recall.

19:59:09 3 Q. Can you explain to me why it's -- it's -- why
19:59:14 4 the customer shouldn't be reimbursed just because there
19:59:18 5 isn't a budget mechanism in place?

19:59:22 6 In other words, if a customer is entitled to
19:59:24 7 reimbursement, as you clearly thought, shouldn't they
19:59:29 8 be reimbursed?

19:59:30 9 MR. STAR: Objection to form.

19:59:32 10 THE WITNESS: I -- I honestly don't know.

19:59:39 11 Q. BY MR. LAMBERT: Which part of that are you
19:59:40 12 saying you don't know to?

19:59:42 13 A. I -- I don't know if the customer is entitled
19:59:44 14 to reimbursement or not and -- and -- and, if he is,
19:59:47 15 whether he should be reimbursed if there is no budget.
19:59:50 16 I don't know.

19:59:53 17 Q. So you're saying, if a customer is sold a
19:59:56 18 wrong product and should be reimbursed, as you opined
20:00:03 19 in this e-mail, you're not sure whether that should
20:00:06 20 actually occur if there isn't a budget for it?

20:00:10 21 MR. STAR: Objection to form.

20:00:15 22 THE WITNESS: No. What I'm saying is that,
20:00:18 23 you know, sometimes you would -- you would reimburse
20:00:21 24 when the product is not the wrong product, just to
20:00:24 25 get it -- to get it over and move on. There are

20:00:27 1 different -- again, it's all speculations.

20:00:31 2 At the end of the day, you know, I wasn't
20:00:34 3 involved with -- with reimbursements -- sales or
20:00:38 4 reimbursements of sales at all. So I -- I honestly
20:00:42 5 don't know what -- what was the process and -- and
20:00:44 6 what would be the right parameters or criteria for a --
20:00:51 7 for a reimbursement.

20:00:53 8 MR. LAMBERT: Okay. Can you turn to Tab 12
20:01:11 9 in your binder? Let's mark that as Exhibit 245.

20:01:27 10 MR. GAMULKA: Can you identify it?

20:01:31 11 MR. LAMBERT: It's SAP 2780, an e-mail from
20:01:36 12 Udi Ziv, dated April 13, 2007. Actually, the very first
20:01:43 13 e-mail is from Dan Kraus to Udi Ziv.

20:01:46 14 (U. Ziv Exhibit 245 marked.)

20:01:48 15 THE WITNESS: Yeah, I have it.

20:01:55 16 Q. BY MR. LAMBERT: If you can review Exhibit
20:01:57 17 245, Mr. Ziv, and let me know when you're ready.

20:02:02 18 A. Sure. (Examining.) Okay. I'm ready.

20:02:38 19 Q. Is Exhibit 245 one of the documents you
20:02:44 20 reviewed in preparing for your deposition today?

20:02:50 21 A. I think so, although I'm not 100 percent sure.

20:02:57 22 Q. Having reviewed Exhibit 245, which is a series
20:03:00 23 of e-mails between April 11, 2007, and April 12, 2007,
20:03:10 24 do you recall what's being discussed?

20:03:12 25 A. The -- the bottom part of the document is

20:03:18 1 the same one we've reviewed in a diff -- in a different
20:03:22 2 ex -- in a prior exhibit. And the top part is the new
20:03:25 3 part, which is, I guess, me saying that we think we've
20:03:30 4 identified the issue that was causing the performance
20:03:32 5 problem.

20:03:38 6 Q. Do you know what a "hotfix" is?

20:03:47 7 A. Yes. There are different ways to --

20:03:49 8 Q. What's a "hotfix"?

20:03:50 9 A. Yeah. There -- there are different ways to --
20:03:54 10 to make changes to a product in a customer environment.
20:04:00 11 There are kind of levels.

20:04:04 12 One is to completely upgrade to a newer
20:04:10 13 version. The other is to -- which is referred to here
20:04:13 14 as a -- as a patch, which is a collection of different
20:04:18 15 bug fixes and corrections that are tested and deployed
20:04:25 16 as a -- as a bundle of corrections.

20:04:29 17 And a hotfix is one -- one -- one bug fix
20:04:35 18 or correction you make for a specific problem and you
20:04:38 19 deploy as is without bundling it with other things
20:04:43 20 and without doing all the holistic and comprehensive
20:04:48 21 testing.

20:04:50 22 Q. Do you have any recollection of what specific
20:04:56 23 problems Hodell was experiencing as of April 13, 2007?

20:05:03 24 A. No. I actually don't.

20:05:07 25 Q. Do you have any knowledge as to whether there

20:05:10 1 was more than one problem that was occurring that was
20:05:13 2 being looked at by SAP?

20:05:16 3 A. No. I don't know.

20:05:19 4 Q. Do you have any -- having read this e-mail
20:05:21 5 in Exhibit 245, do you know whether it's referencing
20:05:26 6 the entire performance problem being experienced by
20:05:32 7 Hodell or just part of it?

20:05:37 8 A. I don't know. I mean, the only thing I can --
20:05:39 9 I can read here: It says:

20:05:41 10 "May be causing this performance problem."

20:05:44 11 But I -- I have no clue what -- whether this was
20:05:48 12 everything or -- or a -- or a partial thing.

20:05:51 13 Q. Okay. Turn to Exhibit 77. It's an exhibit
20:06:03 14 that's already been marked. Let me know when you're
20:06:54 15 ready.

20:06:55 16 A. Okay. Will do. (Examining.) Okay. Ready.

20:08:10 17 Q. Is Exhibit 77 one of the communications you
20:08:16 18 reviewed in preparing for this testimony today?

20:08:23 19 A. I don't recall. The -- the -- the bottom part
20:08:25 20 of it is something we've seen today. But I don't recall
20:08:30 21 if I've seen it two weeks ago or not.

20:08:31 22 Q. Well, having reviewed it, is it fair to -- to
20:08:33 23 state that this is a -- a communication between yourself
20:08:40 24 and the partner Dan Lowery in response to his initial
20:08:46 25 e-mail to you?

20:08:50 1 A. Yeah. It's actually a response to another
20:08:53 2 e-mail, but -- not the initial one. But yes, it's an
20:08:56 3 exchange up until the last e-mail. It's an exchange
20:09:00 4 between me -- myself and Dan Lowery.

20:09:02 5 Q. Right. And -- and, in fact, on the page
20:09:09 6 that -- that's labeled SAP 4612 --

20:09:12 7 A. Uh-huh.

20:09:13 8 Q. -- the fourth page in --

20:09:17 9 A. Yeah.

20:09:17 10 Q. -- he -- Dan Lowery sent you -- Dan Lowery
20:09:20 11 sent you an e-mail April 12, 2007, which looks like
20:09:25 12 a follow-up to his -- his initial e-mail?

20:09:28 13 A. Yeah, yeah. I see it.

20:09:30 14 Q. And, in fact, he's following up and telling
20:09:33 15 you that Hodell is bleeding money and threatening to
20:09:39 16 throw out the system.

20:09:40 17 A. Uh-huh.

20:09:40 18 Q. Do you see that?

20:09:41 19 A. Yes, I do.

20:09:46 20 Q. And you replied to him on the second page in;
20:09:50 21 correct?

20:09:50 22 A. Well, in this --

20:09:52 23 Q. As far as I can tell.

20:09:54 24 A. Yeah.

20:09:57 25 Q. On the page that's labeled SAP 4610?

20:10:02 1 A. Yeah.

20:10:05 2 Q. And you tell him again that the customer's
20:10:09 3 environment is far outside the sweet spot of Business
20:10:12 4 One, and again, you reference the user count; correct?

20:10:16 5 A. I reference the user count and the
20:10:19 6 "et cetera," meaning other things. Yes.

20:10:24 7 Q. And, again, based upon the user count, you
20:10:28 8 would anticipate that performance problems would arise;
20:10:32 9 is that correct?

20:10:34 10 A. It's hard to tell from this. I mean,
20:10:36 11 obviously, I -- I referred to more than just the
20:10:39 12 user count, although the user count is -- is the
20:10:43 13 easiest to -- to reference. But just the fact that
20:10:46 14 it says "with 120 users, et cetera," meaning there
20:10:51 15 are other -- other things here that make the specific
20:10:54 16 customer outside the sweet spot.

20:10:58 17 Q. Okay. And then Dan Lowery replied to you
20:11:04 18 stating that he wasn't aware of that sweet spot;
20:11:10 19 correct?

20:11:12 20 A. Yeah. More or less.

20:11:15 21 Q. Okay. And then you forwarded that on to Dan
20:11:21 22 Kraus and some other individuals within SAP. And that's
20:11:27 23 the top e-mail on page 4609; is that correct?

20:11:32 24 A. Correct.

20:11:35 25 Q. And one of those individuals is Rodney

20:11:38 1 Seligmann.

20:11:39 2 Do you know who Rodney Seligmann is?

20:11:43 3 A. I recall the name. But I don't recall who --
20:11:46 4 what exactly [sic] role he had.

20:11:52 5 Q. Your e-mail message to -- to Mr. Kraus and
20:11:55 6 these other individuals, again, is that someone needs
20:11:59 7 to tell the partner about the Business One sweet spot
20:12:02 8 and that an environment of 120 users and growing is
20:12:06 9 nowhere near it; correct?

20:12:09 10 A. That's what it says. Yes.

20:12:11 11 Q. Again, you're using the customer's user count
20:12:16 12 as a -- a basis for determining that they're outside
20:12:19 13 the sweet spot; correct?

20:12:22 14 A. Yeah. That's what it -- that's what it says
20:12:24 15 here in the e-mail.

20:12:25 16 Q. And, in fact, you knew that the customer's
20:12:31 17 environment was going to be growing, it -- it appears,
20:12:35 18 at least as of April 15, 2007?

20:12:39 19 A. Yeah. I don't know if this was in the thread
20:12:41 20 or not. But, apparently, someone said that, I think.
20:12:44 21 Yeah, I think it says it here. (Examining.) Scale --
20:12:50 22 they're planning more acquisition and adding more users
20:12:53 23 on the following page. So I -- I guess I concluded from
20:12:56 24 that.

20:13:01 25 Q. Based upon your position as the head of Small

20:13:05 1 Business Solutions for SAP, that information that was
20:13:11 2 communicated to you by Dan Lowery -- 120 users and it's
20:13:19 3 expecting to grow -- should that -- should SAP Business
20:13:22 4 One have ever been sold to Hodell in the first place?

20:13:27 5 A. No, I don't think you can reach that
20:13:28 6 conclusion. I think, again, as I said, it's -- it's
20:13:30 7 a combination of many other parameters. Definitely
20:13:34 8 120 users would trigger, you know, some thoughts
20:13:41 9 around is the environment simple enough for -- for
20:13:41 10 the system to support that many concurrent users.

20:13:46 11 So it's not -- it wouldn't be an automatic
20:13:48 12 "yes." But it's not enough to say that the product
20:13:52 13 is not -- is not sufficient.

20:13:56 14 Q. Well, what about the -- the communication that
20:13:59 15 they'll be starting out with 120 users but could double
20:14:05 16 within a year, would that be sufficient?

20:14:08 17 A. You know, think of a -- the sweet spot as a --
20:14:09 18 as a bulls-eye target. I mean, the -- the more you move
20:14:13 19 out, obviously you're -- you're -- you're further away
20:14:16 20 from -- from the natural environment. It still can
20:14:20 21 work, depending on other things. But if you move to
20:14:24 22 a larger number, you -- you probably -- the chances
20:14:27 23 of -- of -- of Business One being a good fit are --
20:14:29 24 are -- are declining. I don't know if 120 or 240 are --

20:14:34 25 Q. Well --

20:14:35 1 A. -- are the right numbers. But -- but that
20:14:37 2 would be the generic kind of thinking.

20:14:42 3 Q. Well, would you agree with me that the chances
20:14:46 4 of Business One being a fit in an environment with 240
20:14:50 5 users is remote?

20:14:52 6 A. No. I don't know what "remote" is. I mean,
20:14:54 7 I'm sure there are situations where, if it's a very
20:14:58 8 simple usage with very few items in the catalog, very
20:15:02 9 few items per order, the product may have worked well
20:15:05 10 in that environment. So I don't know.

20:15:08 11 Q. Well, I'm sure we can think of -- of
20:15:12 12 hypotheticals for every type of situation.

20:15:14 13 But can you think of a situation, under
20:15:18 14 normal business conditions, where SAP Business One
20:15:22 15 would have been suitable for a company using it with --
20:15:25 16 with 240 users?

20:15:30 17 A. Yeah. As you said, hypothetically, yes.
20:15:32 18 Absolutely. I think that we can find a hypothetical
20:15:36 19 customer that is only doing very simple things with
20:15:39 20 very simple items -- very few items -- sorry -- that
20:15:42 21 this would work. Yeah. I don't know. I haven't
20:15:45 22 tested it, or I don't recall any -- any information
20:15:47 23 around this. But hypothetically, yes, that could be
20:15:49 24 the case.

20:15:50 25 Q. What about realistically?

20:15:55 1 A. You know, I don't know if there -- if such
20:15:56 2 customers exist. It's -- it's -- you know, it's too
20:16:00 3 open-ended. I don't know how to answer that.

20:16:04 4 Q. Based upon your recollection, can you
20:16:07 5 call upon your memory and think of any successful
20:16:12 6 installation of SAP Business One where it was installed
20:16:15 7 in an environment of 120 users?

20:16:22 8 A. No. I don't recall the number of users per
20:16:25 9 installation. No, I don't.

20:16:28 10 Q. Can you recall a successful installation of
20:16:31 11 SAP Business One in an environment where there were
20:16:34 12 240 users?

20:16:36 13 A. No. As I said, I don't -- I don't recall
20:16:38 14 the number of users per installation.

20:16:41 15 Q. If there was a -- there was an installation
20:16:54 16 of SAP Business One in an environment of in excess
20:16:58 17 of 200 users, don't you think that would be something
20:17:03 18 you'd recall?

20:17:07 19 A. I don't know. I -- I may -- I may and I may
20:17:10 20 not. I don't know. I don't recall if there was or
20:17:13 21 wasn't.

20:17:13 22 MR. LAMBERT: Can you turn to Tab 13? Let's
20:17:21 23 mark that as 246. If you can review that and let me
20:17:47 24 know when you're finished.

20:17:48 25 MR. GAMULKA: What's the --

20:17:49 1 MR. LAMBERT: Bottom right-hand corner, that's
20:17:49 2 SAP 2692.

20:17:51 3 (U. Ziv Exhibit 246 marked.)

20:17:56 4 THE WITNESS: Thank you.

20:20:48 5 THE VIDEOGRAPHER: Counsel, we have five
20:20:49 6 minutes left on the tape.

20:20:52 7 THE WITNESS: (Examining.) Okay. Ready.

20:21:40 8 Q. BY MR. LAMBERT: Exhibit 246 is a series of
20:21:43 9 e-mails, some of which you're copied on and some of
20:21:47 10 which you're not; correct?

20:21:48 11 A. Yeah. It seems that way.

20:21:51 12 Q. Okay. Having reviewed Exhibit 246, does that
20:21:55 13 help you refresh your recollection at all as to what
20:21:58 14 the hotfix you were referencing in Exhibit 69 was?

20:22:06 15 A. No, it doesn't. It doesn't give me any more
20:22:10 16 details other than it's a hotfix for the specific
20:22:14 17 partner add-on. That's the only thing it says here.

20:22:20 18 Q. Right. Are you referencing the e-mail from
20:22:22 19 Ralf Mehnert-Meland at the bottom of the first page
20:22:27 20 of Exhibit 246?

20:22:32 21 A. Bottom of what page? Sorry.

20:22:35 22 Q. It's at the bottom of SAP 2692, an e-mail
20:22:40 23 from Ralf Mehnert-Meland to some other individuals.

20:22:43 24 A. Yes. Correct.

20:22:47 25 Q. And he's identifying two basic issues

1 relating to the performance; correct?

2 A. Yeah.

3 Q. One being the add-on and the other being
4 performance degrades of large data sets; correct?

5 A. Correct.

6 Q. And then, in the third paragraph there, he
7 says:

8 "The upcoming April fix may resolve the
9 add-on performance issue."

10 Do you see that?

11 A. Yes.

12 Q. Is that the hotfix you were referencing in --
13 in your prior e-mail, Exhibit 69?

14 A. I assume so. It's hard to tell, but I
15 assume so.

16 Q. Okay. But Mr. Mehnert -- Ralf Mehnert-Meland
17 is also saying there's another issue, which is the data
18 set issue; correct?

19 A. Yeah. That's what he says.

20 Q. What's your understanding of what that issue
21 is?

22 A. I assume -- it says here somewhere in the
23 large data set -- data set -- this is something we've
24 talked about, I guess, two hours ago with the larger
25 the data set, the more time it takes for the system

20:23:59 1 to query or to enter data into the system.

20:24:02 2 And, therefore -- again, I don't know what
20:24:04 3 the volume of data he's -- he's -- he's referring to,
20:24:08 4 what is the volume he's referring to. But, generically,
20:24:12 5 the larger the data set, the -- the less performing --
20:24:14 6 performing the system would be or the more performance
20:24:20 7 issues you may have. So that's -- that's my
20:24:23 8 understanding.

20:24:25 9 Q. Is that a function of the number of concurrent
20:24:29 10 users operating the software, or is that a different
20:24:31 11 issue?

20:24:35 12 A. The data set is a combination or -- of many,
20:24:39 13 many, many different things, one of which is obviously
20:24:42 14 the number of concurrent users. But it's also the
20:24:46 15 number of items in the catalog, the number of lines
20:24:50 16 in an order, and probably many other things that I
20:24:53 17 don't remember at -- at this point. So it's a --
20:24:56 18 it's a -- it's -- it's a combination -- it's more
20:25:00 19 or less a multiplication of many different numbers.

20:25:05 20 THE VIDEOGRAPHER: Counsel?

20:25:06 21 Q. BY MR. LAMBERT: At the bottom of that --

20:25:09 22 MR. LAMBERT: I'm sorry. Go ahead.

20:25:10 23 THE VIDEOGRAPHER: We have two minutes left.

20:25:14 24 MR. LAMBERT: Okay. Let's switch it and then
20:25:16 25 come right back.

20:25:18 1 THE WITNESS: Okay.

20:25:19 2 THE VIDEOGRAPHER: This is the end of Tape
20:25:20 3 No. 3 in the video deposition of Udi Ziv. Going off
20:25:26 4 the record. The time is 8:25.

20:25:29 5 (Recess from 8:25 p.m. to 8:33 p.m.)

20:33:39 6 THE VIDEOGRAPHER: This is the beginning of
20:33:41 7 Tape No. 4 in the video deposition of Udi Ziv. Going
20:33:45 8 back on the record. The time is 8:33.

20:33:53 9 Q. BY MR. LAMBERT: Mr. Ziv, I will -- I'm going
20:33:54 10 to stay on Ralf Mehnert-Meland's e-mail down at the
20:34:00 11 bottom of SAP 2692.

20:34:02 12 A. Yes.

20:34:02 13 Q. And specifically his comments about the data
20:34:06 14 set issues. He -- he states there at the very end
20:34:11 15 there:

20:34:11 16 "This is an issue that has been known for
20:34:14 17 years."

20:34:14 18 Do you see that statement?

20:34:19 19 A. Yes. I can see it.

20:34:22 20 Q. Do you concur with his assessment there?

20:34:27 21 A. I don't know exactly what he meant. As I
20:34:31 22 said, generically, large data sets create performance
20:34:38 23 bottlenecks. But I don't know exactly what -- what
20:34:41 24 he was referring to.

20:34:43 25 Q. Well, the large data set issue, in terms

20:34:45 1 of creating performance bottlenecks, was that an issue
20:34:49 2 with SAP Business One throughout its -- throughout your
20:34:55 3 involvement with the software?

20:35:01 4 A. You know, I don't know -- I don't know exactly
20:35:05 5 what -- what -- what you mean by: "Was that an issue?"

20:35:09 6 I mean, generically, it's an issue. If you
20:35:09 7 have too much data in -- in your database and you try
20:35:12 8 to query it, it takes time. That's -- so that's kind
20:35:16 9 of a generic problem that comes with the territory.

20:35:21 10 I don't -- I mean, obviously we had many,
20:35:26 11 many, many customers who did not have performance
20:35:29 12 issues. So that -- from that perspective, I don't
20:35:32 13 think it was something that is common for Business
20:35:35 14 One or however your -- you phrased it.

20:35:38 15 Q. Okay. Well, some -- some ERP softwares can
20:35:39 16 handle large data sets; correct?

20:35:48 17 A. Yeah. Well, depending on what -- what "large"
20:35:51 18 is. But some can handle more than others, yes.

20:35:55 19 Q. Right. And SAP Business One was not a -- a
20:36:00 20 software that could handle a very large amount of data;
20:36:04 21 is that correct?

20:36:08 22 A. Again, it takes more qualification than just
20:36:12 23 saying "a large amount of data." But, generically
20:36:12 24 speaking, SAP Business One was -- did not handle size
20:36:17 25 of data as well as R3, for example. It was not planned

20:36:21 1 to -- to handle that data, just as a comparison.

20:36:25 2 Q. Was it planned to handle the amount of data
20:36:28 3 that A1 was able to handle?

20:36:32 4 A. I don't know exactly what A1 was -- was aimed
20:36:37 5 to handle. But I assume, since it was aiming higher up
20:36:40 6 the -- the company size, the answer would be -- would be
20:36:42 7 "no." But it's only an assumption.

20:36:45 8 Q. Okay. The amount of data that SAP Business
20:36:51 9 One could handle, did that remain the same during your
20:36:56 10 involvement in -- with the software?

20:37:01 11 Another -- another -- another way for me
20:37:03 12 to phrase that is: When Mr. Mehnert-Meland sent this
20:37:06 13 e-mail, SAP Business One couldn't handle less data than
20:37:11 14 it could handle, let's say, in 2004?

20:37:14 15 Is that fair?

20:37:15 16 A. Yeah. I think that's a fair statement.
20:37:16 17 Although, again, as a disclaimer to that statement,
20:37:19 18 the -- the amount of data is only -- is not the only
20:37:22 19 thing that is affecting performance.

20:37:31 20 Q. And what do you mean by that?

20:37:32 21 A. I mean, depending on the type of data and
20:37:35 22 the complexity of the usage, for example, different
20:37:39 23 add-ons that are accessing the data and what type of
20:37:43 24 queries they're doing. So it's much more complex than
20:37:43 25 just saying the size of data is -- is the metric for

20:37:49 1 performance.

20:37:50 2 Q. I want to reference Mr. Mehnert --

20:37:52 3 Mehnert-Meland's summary. He states:

20:37:54 4 "Hodell just has too much data. SAP Business
20:37:58 5 One cannot handle it, and there is no fix in sight. I
20:38:01 6 believe we need to find a way to get the customer off
20:38:05 7 of SAP Business One."

20:38:07 8 Do you see that?

20:38:08 9 A. Yeah, I do.

20:38:09 10 Q. Do you know whether or not Mr. Mehnert-Meland
20:38:10 11 is qualified to make that determination?

20:38:17 12 A. I don't know. He -- I mean, he was part
20:38:20 13 of the field organization. So, obviously, unless,
20:38:23 14 you know, he got very specific information from the
20:38:26 15 technical people, he wouldn't be the one to call or
20:38:31 16 to say whether this was too large or not too large.
20:38:34 17 But he may have gotten this information from somewhere.

20:38:41 18 Q. Well, I want you to assume that SAP -- or
20:38:43 19 that Hodell -- that he is correct that Hodell did
20:38:47 20 have too much data.

20:38:49 21 Is he also correct in -- in making the
20:38:54 22 statement that there is no fix in sight for that
20:38:57 23 particular problem?

20:38:58 24 A. I don't know what the exact problem was.
20:39:00 25 Again, it's -- it's too vague to -- to say just that

20:39:04 1 the data set was too large. So it's hard to say.

20:39:14 2 Q. Is it -- do you have any reason to believe
20:39:16 3 that -- strike that.

20:39:23 4 Do you have any reason to disagree with
20:39:25 5 Mr. Mehnert-Meland's conclusion?

20:39:30 6 A. Which conclusion?

20:39:35 7 Q. Well, there's three of them: That Business
20:39:37 8 One cannot hand -- that Hodell has too much data, first;
20:39:41 9 that Business One cannot handle it, second; and third,
20:39:44 10 that the customer needed to get off Business One.

20:39:48 11 A. I -- I have no information about either --
20:39:52 12 actually, all three. I don't know if it was too much
20:39:56 13 data. I don't know if that amount of data was something
20:40:00 14 that Business One could handle or not.

20:40:02 15 And whether they were -- they needed to get --
20:40:04 16 be off the system, you know, it's, again, subjective.
20:40:07 17 If the system didn't work well for them, maybe it's a
20:40:11 18 good advice. But I don't know if -- that it's coming
20:40:13 19 from the too much data or -- or the fact that Business
20:40:16 20 One cannot handle that amount of data.

20:40:18 21 MR. LAMBERT: Can we turn to Tab 15 and mark
20:40:24 22 that as 247.

20:40:30 23 THE WITNESS: Tab 15?

20:40:31 24 MR. LAMBERT: Yes. SAP 3644.

20:40:42 25 (U. Ziv Exhibit 247 marked.)

20:40:50 1 THE WITNESS: Thank you. Okay.

20:40:59 2 You want me to read it?

20:41:00 3 Q. BY MR. LAMBERT: Review as much as you'd like.

20:41:05 4 I'm just going to ask you about the e-mail -- your

20:41:07 5 e-mail at the top.

20:41:09 6 A. Okay. Let me just skim through the rest.

20:41:12 7 (Examining.) Okay. Ready.

20:41:50 8 Q. Exhibit 247 is -- consists of an e-mail that

20:41:54 9 Dan Lowery had forwarded to yourself and some others

20:41:57 10 at SAP from Otto Reidl at Hodell; correct?

20:42:05 11 A. I don't know if it was forwarded to me. But

20:42:09 12 I think yes. Yes, you're right.

20:42:12 13 Q. Okay. And -- and Mr. Reidl is -- is letting

20:42:19 14 Dan Lowery know about the problems they're having with

20:42:22 15 the installation of -- of Business One at their site;

20:42:24 16 correct?

20:42:27 17 A. Yes.

20:42:31 18 Q. And then that information's forwarded on to

20:42:35 19 you and Dirk Boessmann --

20:42:38 20 A. Correct.

20:42:38 21 Q. -- correct?

20:42:39 22 A. Yes.

20:42:41 23 Q. And you forward that, in turn, on to Dan

20:42:44 24 Kraus, Niels Stenfeldt, and Dirk Boessmann?

20:42:50 25 A. Uh-huh. Yes.

20:42:51 1 Q. And you -- and, again, you opine:
20:42:53 2 "There's not much we can do here. We will
20:42:59 3 supply what may be a fix for the current problem, but
20:43:03 4 we know...there will be others. There is no doubt that
20:43:04 5 this is not a B1 customer, and we somehow need to get
20:43:09 6 away from this."

20:43:11 7 Do you see that?

20:43:12 8 A. Yes, I do.

20:43:13 9 Q. Was that statement true at the time it was
20:43:15 10 made?

20:43:16 11 A. I assume so.

20:43:20 12 Q. Do you know what information you had that
20:43:23 13 led you to that conclusion?

20:43:26 14 A. I can only assume that I had information
20:43:28 15 that I just reviewed here, all the prior e-mails of
20:43:31 16 the last, I guess, almost two weeks of -- since this
20:43:35 17 was first brought to my attention.

20:43:45 18 Q. Okay. Can you turn to Exhibit 79, previously
20:43:51 19 marked as Exhibit 79? Review as much of that as you'd
20:44:18 20 like. But I'm going to only ask you about -- I'm only
20:44:38 21 going to ask you about the e-mail at the bottom of
20:44:42 22 SAP 915.

20:44:44 23 A. (Examining.) 915?

20:44:48 24 Q. Yes.

20:44:48 25 A. 915. Yes.

20:45:03 1 Q. It's an e-mail from Dale Van Leeuwen to Ralf
20:45:06 2 Mehnert-Meland, February 27, 2006?

20:45:12 3 A. Uh-huh.

20:45:15 4 Q. And down about halfway through the e-mail,
20:45:20 5 Mr. Van Leeuwen states:

20:45:21 6 "To assist you in understanding the
20:45:23 7 environment we are deploying in, I provide the
20:45:26 8 following."

20:45:26 9 And then he lists out certain information.

20:45:29 10 A. Uh-huh.

20:45:32 11 Q. One of which is the database size has
20:45:37 12 approximately 150,000 SKUs, 20,000 customers, 7,500
20:45:44 13 vendors?

20:45:44 14 A. Uh-huh.

20:45:49 15 Q. And then on the next page, the very last,
20:45:53 16 he writes:

20:45:55 17 "Client will be running with 120 users."

20:46:02 18 A. Uh-huh.

20:46:07 19 Q. Based upon what you know about SAP Business
20:46:09 20 One, as the head of the -- of the Small Business unit,
20:46:15 21 is that information sufficient for you to determine
20:46:18 22 that SAP Business One is not an appropriate solution
20:46:21 23 for this customer?

20:46:29 24 A. No. It's hard to tell. I mean, there's
20:46:32 25 definitely more information here than there was anywhere

20:46:36 1 in the documents I've reviewed before. But it's hard
20:46:39 2 to tell. No, it's -- I mean, the usage, what type of
20:46:44 3 add-ons are being run, if at all -- no, it's -- it's --
20:46:50 4 it's probably not enough.

20:46:54 5 Q. What -- what additional information would
20:46:56 6 you need at this point?

20:46:58 7 A. To really know, you need to understand exactly
20:47:05 8 what -- what the -- the exact usage is, meaning what are
20:47:09 9 the -- each one of the users doing, how many different
20:47:14 10 orders they open a day, how many -- how many lines per
20:47:18 11 order they open.

20:47:22 12 If you don't have that, it's difficult to --
20:47:24 13 to assess, just from the numbers you have here, what
20:47:28 14 would be -- I mean, it's difficult to test exactly the
20:47:33 15 system in this environment. And, therefore, it would
20:47:33 16 be very difficult to know whether it -- it can scale
20:47:35 17 to this level or not.

20:47:41 18 Q. At the very least, this would have been a
20:47:44 19 red flag with respect to whether this was an appropriate
20:47:49 20 deployment of Business One; isn't that true?

20:47:53 21 A. I don't recall if this -- this would have
20:47:56 22 been a red flag or any type of other flag, depending
20:48:00 23 on the number. As I said, you know, later on it says
20:48:05 24 120 users. By -- by itself, this would drive not --
20:48:08 25 maybe not a red flag, but a desire to -- to know more

20:48:16 1 of the usage in order to make sure it -- it can function
20:48:19 2 well.

20:48:21 3 Q. Isn't it true that the -- the database size
20:48:24 4 of 150,000 SKUs, 20,000 customers, and 7,500 vendors is
20:48:31 5 well outside what had been tested for SAP Business One?

20:48:37 6 A. I don't remember. I don't remember what were
20:48:38 7 the test sets we were using.

20:48:43 8 Q. Well, do you know whether they were remotely
20:48:45 9 close to those numbers?

20:48:47 10 A. I actually don't. Don't remember.

20:48:56 11 Q. If we assume that Mr. Mehnert-Meland was also
20:49:01 12 aware that there would be two add-on products running
20:49:05 13 with SAP Business One, along with the information we
20:49:09 14 just reviewed, would you then be able to acknowledge
20:49:15 15 that this was not an appropriate deployment of SAP
20:49:20 16 Business One in this environment?

20:49:24 17 A. No. That probably wouldn't be sufficient
20:49:26 18 either. You know, if -- if the add-ons were -- were
20:49:29 19 heavy on -- on accessing or writing -- accessing data
20:49:33 20 or writing data, it would probably intuitively say it's
20:49:37 21 going to complicate things.

20:49:39 22 But -- but, again, it's -- it's -- it's not
20:49:41 23 enough. The actual usage of the users is what probably
20:49:43 24 would -- combined with all the information about the --
20:49:46 25 the quantifying information here would -- would give

20:49:49 1 us the -- a better approximation.

20:50:02 2 Q. Are you telling me that, even having that
20:50:04 3 information available to you, you would not be willing
20:50:08 4 to state that at least it's a red flag with regard to
20:50:12 5 whether Business One is going to perform adequately
20:50:16 6 in that environment?

20:50:17 7 A. I -- I'm not sure I understand what the
20:50:20 8 definition of "red flag" is.

20:50:22 9 Q. Would it raise an alert in your mind as to
20:50:28 10 whether Business One was going to perform adequately
20:50:36 11 in -- in -- in such an environment where there's that
20:50:39 12 many -- that large of a database, that many users, and
20:50:44 13 two add-on products?

20:50:47 14 A. Yeah. As I said before, it probably would
20:50:49 15 have triggered a desire to test or -- or to -- to
20:50:55 16 understand exactly what the usage would be in order
20:50:58 17 to make sure it can be a right fit.

20:51:02 18 Q. Was there a method to determine -- or to
20:51:06 19 test with 120 users running concurrently under the
20:51:14 20 environment that Hodell would be implementing SAP
20:51:16 21 Business One?

20:51:18 22 A. At the customer site?

20:51:22 23 Q. How about at -- how about at SAP's site in
20:51:25 24 Israel?

20:51:28 25 A. Yeah. I don't recall the exact dates. But

20:51:30 1 we -- we had tools that could load-test the system
20:51:36 2 with users, with auto -- kind of automatic users that
20:51:38 3 obviously can go beyond 120. That by itself probably
20:51:44 4 would not simulate the Hodell environment.

20:51:47 5 So the only way to really test this with the
20:51:50 6 right add-on, with the right hardware, with the right
20:51:50 7 setup, with the right scenarios the users are doing is
20:51:54 8 to actually do it on-site. And to that, I don't know
20:51:59 9 the answer.

20:52:06 10 Q. I haven't seen any e-mails from you after
20:52:11 11 that April 25th, 2007, e-mail.

20:52:17 12 Do you recall having any involvement with
20:52:18 13 Hodell after April 2007?

20:52:22 14 A. No. I don't recall.

20:52:31 15 Q. Do you recall what the status of the
20:52:33 16 implementation at Hodell was after -- or when you
20:52:37 17 stopped being involved?

20:52:42 18 A. No, I don't.

20:52:49 19 MR. LAMBERT: Turn to Tab 4 in your binder.
20:52:54 20 It's SAP 13073.

20:53:07 21 MR. GAMULKA: What exhibit number are we up
20:53:09 22 to?

20:53:10 23 THE WITNESS: The last one was 246. No.
20:53:13 24 Sorry. 247, the last one.

20:53:15 25 MR. GAMULKA: It should be 248?

20:53:17 1 MR. LAMBERT: Yes. Sorry. 248.

20:53:20 2 MR. GAMULKA: Is this "Quality Gate"?

20:53:22 3 MR. LAMBERT: Yes.

20:53:24 4 (U. Ziv Exhibit 248 marked.)

20:53:25 5 THE WITNESS: (Examining.) Okay. Only 53

20:53:35 6 pages to review, but that's fine. Go ahead.

20:53:40 7 Q. BY MR. LAMBERT: I'm only going to ask you

20:53:42 8 about a couple of them.

20:53:44 9 But have you ever seen this document before?

20:53:46 10 A. I don't remember.

20:53:50 11 Q. I'll represent to you that it came from SAP

20:53:53 12 as part of their collection of your files.

20:53:56 13 A. Uh-huh.

20:53:57 14 Q. Do you have any reason to think that this

20:53:59 15 was not included in your files?

20:54:01 16 A. No. No reason to.

20:54:02 17 Q. Do you know what the purpose of a document

20:54:05 18 such as Exhibit 248 was in general?

20:54:09 19 A. Just by the name -- I haven't reviewed it yet.

20:54:12 20 But just by the name, it's -- throughout the process of

20:54:15 21 development, you have different gates that, basically,

20:54:18 22 you check different criteria and whether the -- you can

20:54:23 23 move on to the next phase of the process.

20:54:29 24 Here it says "Planning to development," which

20:54:31 25 is one -- which was one of the phases. And I guess it's

20:54:35 1 a quality gate for that phase.

20:54:39 2 Q. Okay. Turn to -- it's looks like it's

20:54:46 3 Slide 30. There's a little footer down at the bottom

20:54:50 4 with numbers.

20:54:53 5 A. Hold on.

20:54:53 6 Q. It's also SAP 13102.

20:54:57 7 A. Yes. Okay.

20:55:05 8 Q. There's a statement:

20:55:09 9 "Status of standard: Data archiving."

20:55:12 10 Do you know what that's referring to?

20:55:18 11 A. I -- I understand the words. I don't recall

20:55:20 12 what it meant. Data archiving is something we discussed

20:55:24 13 already. What's -- what does it mean, "status of

20:55:27 14 standard," I don't recall.

20:55:29 15 Q. Okay. Well, on this slide, it states the:

20:55:33 16 "Standard was declared not applicable to B1

20:55:36 17 as database sizes are relatively small."

20:55:40 18 Do you see that statement?

20:55:41 19 A. Yes.

20:55:42 20 Q. Is it your recollection that the data

20:55:44 21 archiving feature wasn't necessary on Business One

20:55:47 22 because the database sizes that it was intended to

20:55:54 23 access were not going to be large?

20:55:59 24 A. If I recall correctly, now that I think about

20:56:03 25 this -- I mean, SAP has many, many different standards

20:56:06 1 for developing products. I assume this data archiving
20:56:10 2 was one of them and, by whatever committee, was decided
20:56:14 3 that Business One did not have to follow that standard
20:56:16 4 because it represented relatively small sizes of
20:56:22 5 databases. So that -- that's what it meant here.

20:56:30 6 Q. Okay. And then under the "Risk" section,
20:56:34 7 it states:

20:56:35 8 "Performance issues reported by customers
20:56:37 9 might be mitigated if data archiving capabilities
20:56:43 10 were available."

20:56:44 11 Do you see that?

20:56:45 12 A. Yes, I do.

20:56:45 13 Q. And based upon your experience with SAP,
20:56:48 14 does that mean that performance problems with respect
20:56:53 15 to database size could be alleviated by the presence
20:57:01 16 of the data archiving capability?

20:57:04 17 A. That's what it says here, that it might be
20:57:06 18 mitigated if data archiving ability were available.
20:57:09 19 It also says here that it needs to be further assessed
20:57:13 20 by solution management whether that statement is true
20:57:18 21 or not.

20:57:25 22 Q. Can you turn to page -- Slide 34?

20:57:34 23 A. Yes.

20:57:35 24 Q. It's titled:

20:57:36 25 Detail --

20:57:37 1 "Detailed Readiness Check."

20:57:39 2 A. Uh-huh.

20:57:40 3 Q. It states:

20:57:42 4 "Current performance of B1 is acceptable, but
20:57:45 5 not good enough."

20:57:47 6 A. Okay.

20:57:47 7 Q. Is that your understanding of -- of the status
20:57:50 8 of Business One at or around this time?

20:57:53 9 A. You know, it's -- "acceptable, but not good
20:57:58 10 enough" is kind of an oxymoron.

20:58:01 11 But I guess. I don't know what this meant
20:58:06 12 here by that.

20:58:09 13 Q. Well, under the "Risk" section, it says:

20:58:11 14 "'Acceptable' performance might become an
20:58:12 15 issue for customers expecting a system with good
20:58:15 16 performance."

20:58:16 17 A. Uh-huh.

20:58:16 18 Q. Do you recall that being discussed in your
20:58:19 19 organization as of the date of this document, which
20:58:23 20 is September 8, 2005?

20:58:26 21 A. No, I don't. I don't recall a conversation
20:58:28 22 about this or a discussion about this.

20:58:32 23 Q. You don't recall a discussion as to whether
20:58:35 24 the performance of SAP Business One was acceptable --

20:58:38 25 A. No, I don't.

20:58:39 1 Q. -- in 2005?

20:58:41 2 A. I don't recall that.

20:58:42 3 MR. LAMBERT: Okay. Turn to Tab 6 in your
20:58:54 4 binder.

20:58:54 5 THE WITNESS: Tab 6.

20:58:55 6 MR. LAMBERT: Mark that as two -- 249.

20:59:03 7 It's titled:

20:59:05 8 "SBS Roll-Out...Requested Budget." (As read.)

20:59:13 9 (U. Ziv Exhibit 249 marked.)

20:59:16 10 THE WITNESS: (Examining.) Uh-huh.

20:59:22 11 Q. BY MR. LAMBERT: I'll represent to you this
20:59:23 12 was also produced by SAP from your files.

20:59:28 13 Have you ever seen it before?

20:59:29 14 A. I don't remember.

20:59:31 15 Q. Do you have any reason to think it didn't
20:59:33 16 come from your files?

20:59:35 17 A. No. No such reason.

20:59:37 18 Q. Do you have any understanding as to the
20:59:39 19 purpose of a document such as Exhibit 249?

20:59:44 20 A. Off the top of my head, no. I will have
20:59:47 21 to read it. I don't exactly understand from the
20:59:50 22 title what it was about. (Examining.)

20:59:58 23 MR. LAMBERT: Can you turn to Tab 8? Let's
21:00:06 24 mark that as 250.

21:00:19 25 MR. GAMULKA: What's -- what's the title?

21:00:20 1 MR. LAMBERT: "Moving B1 Forward."
21:00:25 2 (U. Ziv Exhibit 250 marked.)
21:00:47 3 Q. BY MR. LAMBERT: Please review that and let
21:00:49 4 me know when you're finished.
21:00:54 5 A. (Examining.) Okay. Go ahead.
21:02:09 6 Q. I'll represent to you Exhibit 250 was also
21:02:12 7 produced by SAP from your files.
21:02:14 8 Do you recall seeing that document?
21:02:16 9 A. I don't.
21:02:20 10 Q. Is this a document you would have received
21:02:22 11 as -- in your position as the head of the Small Business
21:02:26 12 [sic] organization at SAP?
21:02:32 13 A. May have been. I don't know. I'm not even
21:02:33 14 sure who the originator was. But potentially -- I mean,
21:02:40 15 this was about Business One, so I assume so.
21:02:42 16 Q. Okay. Look at the second page of that
21:02:45 17 document.
21:02:46 18 Well, first of all, on the first page, this
21:02:48 19 is dated March 17, 2006. Do you see that?
21:02:52 20 A. Yes.
21:02:52 21 Q. And this is the market strategy group.
21:02:54 22 Do you know who was in that group?
21:02:57 23 A. No. I don't recall. I don't recall the
21:02:59 24 group at all.
21:03:02 25 Q. Okay. Second page, "Summary," the first

21:03:07 1 bullet point states:

21:03:08 2 "Business One mostly suffers from a lack of
21:03:10 3 focus that resulted in: The product being positioned
21:03:12 4 'too deep.'" (As read.)

21:03:14 5 Do you know what that refers to?

21:03:17 6 A. No. I actually don't understand the term
21:03:19 7 "too deep" here.

21:03:26 8 Q. Item No. 1 on that slide states:

21:03:29 9 "SAP cannot afford to invest significant
21:03:31 10 specific go-to-market resources into Business One,
21:03:34 11 as the focus will be on SME." (As read.)

21:03:39 12 Do you see that?

21:03:39 13 A. Yes, I do.

21:03:42 14 Q. Had you -- had you received this -- this
21:03:46 15 PowerPoint slide, what would you understand that to
21:03:48 16 mean?

21:03:50 17 A. I can -- I can tell you what I understand now.
21:03:54 18 I don't know what was -- what would be my understanding
21:03:57 19 five years ago or six years ago.

21:03:59 20 "SME" is "small and midsize enterprises."

21:04:03 21 And this -- what it says here in Bullet No. 1 is that
21:04:07 22 whoever wrote this thinks or says that the company
21:04:10 23 cannot afford specific small business go-to-market
21:04:14 24 resources, as the focus will be the broader small
21:04:19 25 and midsize enterprise go-to-market.

21:04:25 1 Q. Isn't it fair to summarize that as stating
21:04:27 2 that SAP is going to focus its resources on the --
21:04:34 3 on the broader SME market and not on Business One?

21:04:37 4 Is that fair?

21:04:38 5 A. No. I think it's -- it's fair to say that
21:04:40 6 the go-to-market would be on a broader SME, small and
21:04:46 7 midsize, versus specifically on small or specifically
21:04:50 8 on midsize.

21:04:53 9 Q. No. 2 says:

21:04:56 10 "The solution then seems to be: Re-position
21:04:59 11 the product at the right level."

21:05:01 12 Do you see that?

21:05:03 13 A. Yes.

21:05:05 14 Q. Is it your understanding that Business One
21:05:06 15 was being marketed and sold at the wrong level?

21:05:12 16 A. No. I -- I don't know. I can only say
21:05:16 17 what it says here. And it says: Position at the
21:05:20 18 right level. I don't know what the wrong level is.

21:05:24 19 Q. Okay. Turn to the next page.

21:05:32 20 A. Uh-huh.

21:05:37 21 Q. There's a -- there's a statement about:

21:05:40 22 "Positioning B1 'just below' A1."

21:05:43 23 A. Uh-huh.

21:05:44 24 Q. Is it your understanding that that's what
21:05:46 25 occurred?

21:05:51 1 A. Yeah.

21:05:51 2 MR. LAMBERT: Turn to Tab 9. Let's mark

21:06:10 3 that as 251.

21:06:17 4 THE WITNESS: Tab 9.

21:06:27 5 MR. GAMULKA: Is it an e-mail?

21:06:32 6 MR. LAMBERT: An e-mail from Gadi to Udi,

21:06:34 7 March 13, 2006.

21:06:38 8 (U. Ziv Exhibit 251 marked.)

21:06:41 9 THE WITNESS: Thank you.

21:06:45 10 Q. BY MR. LAMBERT: Can you review that and let

21:06:46 11 me know when you're finished?

21:06:49 12 A. Okay. (Examining.) Okay. Go ahead.

21:08:35 13 Q. Exhibit 251 is another e-mail that was

21:08:39 14 produced by SAP from your files. That's an e-mail

21:08:43 15 forwarded to you on March 13, 2006.

21:08:46 16 Do you recall receiving any of this

21:08:48 17 information?

21:08:49 18 A. No, I do not.

21:08:52 19 Q. Any reason to think it didn't come from your

21:08:56 20 file?

21:08:56 21 A. No.

21:08:58 22 Q. I'll ask you some questions about the second

21:09:00 23 page of that document.

21:09:04 24 There's a section called "GTM." Does that

21:09:08 25 stand for "go-to-market"?

21:09:10 1 A. Correct.

21:09:12 2 Q. On the fourth bullet point states:

21:09:16 3 "The best segment for the current B1 product
21:09:19 4 is companies" with one -- "with 10 to 100 employees,
21:09:22 5 hence growth in VSE market with B1 is not being
21:09:29 6 pursued."

21:09:29 7 Do you know what that means?

21:09:31 8 A. Yeah. It's -- I think the important part
21:09:34 9 of that statement is the -- the last part. And this
21:09:37 10 is saying that Business One should not be pursued for
21:09:41 11 the very small enterprises, which is below ten -- ten
21:09:46 12 employees, I guess, in this terminology.

21:09:50 13 Q. Okay. That was my next question.

21:09:54 14 "VSE" stands for "very small enterprises"?

21:09:59 15 A. Correct.

21:09:59 16 Q. Okay. Is the statement "the best segment
21:10:02 17 for B1 is companies with 10 to 100 employees," to
21:10:05 18 your knowledge, was that new information or was that
21:10:09 19 previously known information?

21:10:11 20 A. I don't know.

21:10:20 21 Q. Down at the bottom, there's a -- well, let's
21:10:24 22 actually go down one -- the three more bullet points,
21:10:28 23 quote:

21:10:29 24 "An absolute minimum of investments and effort
21:10:32 25 will be needed in the future, as B1 cannot be" withdrawn

21:10:36 1 "from existing markets, due to the implications for
21:10:39 2 SAP's brand." (As read.)

21:10:41 3 A. Uh-huh.

21:10:42 4 Q. Do you know what that means?

21:10:44 5 A. Not specifically. I can only assume that
21:10:49 6 it means that areas that we've already sold -- whether
21:10:53 7 it's countries or types of businesses -- and currently
21:10:57 8 do not want to pursue those sales cannot be redrawn
21:11:02 9 just because of the implication to SAP's brand. And,
21:11:06 10 therefore, we will need to continue investment there.

21:11:09 11 But, again, it's speculation on -- on what
21:11:10 12 is written -- written here.

21:11:14 13 Q. Under "Financial," there's a statement:

21:11:16 14 "There will only be limited B1 funding for
21:11:19 15 GTM and marketing."

21:11:22 16 A. Uh-huh.

21:11:23 17 Q. Do you see that?

21:11:23 18 A. Yes.

21:11:25 19 Q. What's that mean to you?

21:11:27 20 A. Very simple. There will not be a lot of
21:11:31 21 funding for go-to-market for a -- specifically for
21:11:34 22 Business One.

21:11:40 23 Q. Is this at or around the time that development
21:11:44 24 for A1 was ramping up?

21:11:47 25 A. I don't recall. But, you know, A1 was

21:11:50 1 there -- I'm pretty sure A1 was there a long time
21:11:56 2 before that 2006 date. But, again, I don't recall
21:11:59 3 exactly.

21:12:03 4 Q. There's also a statement:
21:12:05 5 "B1 must be profitable within the next 18
21:12:09 6 months."

21:12:09 7 A. Uh-huh.

21:12:10 8 Q. Is it your understanding that, up until this
21:12:12 9 point, Business One had not been profitable?

21:12:15 10 A. Correct.

21:12:18 11 Q. What were the ramifications if Business One
21:12:21 12 was not profitable within the next 18 months?

21:12:24 13 A. I don't know. It doesn't say. And, again,
21:12:26 14 I don't know who exactly wrote this document.

21:12:31 15 As any new business at a company like SAP,
21:12:34 16 the -- the first few years you lose money. And then,
21:12:39 17 obviously, the goal is to be profitable at a certain
21:12:42 18 point. Someone here set a goal for 18 months. I don't
21:12:43 19 know exactly what -- what and -- and why that goal was
21:12:46 20 set.

21:12:49 21 Q. Well, when did SAP acquire the Business One
21:12:54 22 software?

21:12:59 23 A. I don't recall. Definitely after 2001. But
21:13:05 24 it may have been either late -- I -- I -- I don't know.
21:13:09 25 I don't recall.

Q. Well, this e-mail was sent about probably four years after SAP acquired the software?

Would that be fair?

A. Yeah.

Q. Would that be a fair estimate?

A. Probably.

Q. And Business One hadn't been profitable for those four years?

A. Correct.

Q. Did you have any discussions with anyone at the board of SAP as to why Business One was not profitable?

A. I don't recall any specific discussions.

It was not -- it was not a big deal, first of all. It was a small organization for the company. And, secondly, it was obvious that we were going after a volume market. And until you get to a significant volume of customers, you cannot be successful. So the ramp-up of -- of volume did not allow yet for a profitability.

Q. Is it fair to say that, in order to achieve profitability, SAP Business One needed to be sold at a high volume, not necessarily with respect to highly individualized situations?

MR. KELLEHER: Objection to form.

21:14:29 1 THE WITNESS: You know, generically, you're
21:14:30 2 right. I don't know that this is the case here. But,
21:14:34 3 generically, you want to sell to the normal customer
21:14:38 4 and not to the specific -- specific cases.

21:14:44 5 Q. BY MR. LAMBERT: Was that because if -- if SAP
21:14:46 6 has to spend a lot of -- a lot of time and effort on --
21:14:48 7 on any one particular installation, that installation
21:14:52 8 will end up being -- end up losing money rather than
21:14:56 9 making money?

21:14:58 10 A. Again, generically, that statement is correct.

21:15:01 11 I don't know. I mean, it needs to be in a
21:15:04 12 specific case. But -- but, generically, your statement
21:15:07 13 is correct. If you spend more time -- more -- more
21:15:09 14 money than the customer is paying you, obviously you
21:15:13 15 lose money.

21:15:14 16 Q. Do you recall what the -- the budget for SAP
21:15:17 17 for -- or for your particular organization was in 2006?

21:15:28 18 A. I don't.

21:15:30 19 Q. How about for 2007?

21:15:33 20 A. I don't.

21:15:47 21 Q. Can you describe for me -- I don't want to
21:15:47 22 spend a lot of time with this.

21:15:49 23 But the SDK -- what does the "SDK" stand for?

21:15:57 24 A. "SDK" is an acronym -- acronym for "software
21:16:00 25 development kit." It's the standard industry term that

21:16:03 1 is used for the ability of -- of providing -- you --
21:16:07 2 when you provide an SDK, a -- a software development
21:16:12 3 kit, you allow other companies, other ISVs, independent
21:16:15 4 software vendors, to -- to access your system and to
21:16:23 5 enhance it from the outside. That's kind of a short
21:16:27 6 explanation.

21:16:28 7 Q. In other words -- in other words, third
21:16:29 8 parties can't access the core Business One code.
21:16:32 9 They can only access Business One through the SDK.

21:16:37 10 Is that correct?

21:16:39 11 A. Yeah. The recommended -- the recommended
21:16:39 12 way of accessing a product is via the SDK. You can
21:16:44 13 obviously access it directly through the data. But
21:16:47 14 then you may hurt data integrity, et cetera.

21:16:52 15 Q. In your opinion, does requiring add-on
21:16:56 16 products to access Business One through the SDK slow
21:16:59 17 down the performance?

21:17:06 18 A. It's -- well, let me try to answer this so
21:17:11 19 the answer is accurate.

21:17:14 20 If you're asking whether accessing -- as an
21:17:17 21 add-on, accessing the data -- database directly would
21:17:21 22 be quicker than accessing through the SDK, the answer
21:17:25 23 is "yes." But the accessing through -- accessing the
21:17:27 24 data directly from the database is not an option because
21:17:31 25 you're at the risk of hurting data integrity, which

21:17:35 1 is -- especially for a system like Business One, which
21:17:38 2 is -- at the end of the day, holds the accounting for
21:17:41 3 a -- for a business, data integrity, of course, cannot
21:17:46 4 be affected.

21:17:47 5 Does that answer?

21:17:49 6 Q. Yes. Was the core SAP Business One code
21:17:53 7 closely guarded by your organization?

21:17:57 8 A. The code itself? Absolutely.

21:18:01 9 Q. Did you ever receive any complaints from
21:18:03 10 anyone in Germany -- SAP Germany that they weren't
21:18:08 11 given enough access to the code?

21:18:12 12 A. I don't recall.

21:18:17 13 Q. Is it safe to say that the SDK was designed
21:18:21 14 for smaller app -- for smaller add-on products?

21:18:27 15 A. No. Not necessarily.

21:18:40 16 Q. Are you familiar with Business One product
21:18:44 17 direction road maps?

21:18:49 18 A. No. Not specifically, no.

21:18:52 19 Q. You've never heard of -- of that document or
21:18:55 20 a document called a product development road map before?

21:19:00 21 A. I mean, the -- the combination of the words
21:19:03 22 sound familiar. But I don't remember a specific
21:19:05 23 document.

21:19:07 24 Q. How about a Business One statement of
21:19:09 25 direction?

21:19:11 1 A. No. Again, the -- the name -- I mean, the
21:19:14 2 combination of words is something that rings a bell.
21:19:17 3 But I don't remember a document.

21:19:21 4 Q. Can you look at what's been marked as
21:19:23 5 Exhibit 124 in a previous deposition?

21:19:40 6 A. (Examining.) Yes.

21:19:47 7 Q. Have you ever seen a document like Exhibit 124
21:19:52 8 before?

21:19:53 9 A. I don't recall.

21:19:53 10 Q. Up in the upper left-hand corner, its sponsor
21:20:03 11 is Gadi Shamia.

21:20:06 12 Do you see that?

21:20:06 13 A. Yes.

21:20:06 14 Q. And he reported directly to you?

21:20:06 15 A. Yes.

21:20:08 16 Q. Is this something that he would have given
21:20:12 17 to you to review before it was published?

21:20:14 18 A. I don't remember.

21:20:18 19 Q. You don't remember whether he was required
21:20:21 20 to allow you to review this before it was published?

21:20:25 21 A. I don't remember whether it was required or
21:20:27 22 whether he actually did give it for my review -- handed
21:20:33 23 it to me for my review. I don't recall.

21:20:37 24 Q. Is this some -- looking at the information
21:20:41 25 contained in this -- in this document, is this something

21:20:45 1 that you would have expected to have had the opportunity
21:20:48 2 to review before it was published?

21:20:53 3 A. It's hard to tell. I mean, not necessarily
21:20:56 4 the document itself. I mean, obviously, the -- the
21:20:58 5 direction, I would probably have to be involved with.
21:21:05 6 But not necessarily the document itself.

21:21:12 7 Q. Can you turn to page 5?

21:21:14 8 A. Uh-huh.

21:21:17 9 Q. And specifically Section 3.1, "Summary."

21:21:26 10 A. 3.1, "Summary." Yes.

21:21:30 11 Q. There's a statement in the second paragraph:

21:21:31 12 "In future releases, SAP Business One will
21:21:34 13 focus on the needs of businesses with 10 to 100
21:21:38 14 employees."

21:21:39 15 A. Uh-huh.

21:21:39 16 Q. Do you see that statement?

21:21:41 17 A. (Witness nods head in the affirmative.)

21:21:43 18 Q. Do you remember the focus -- does that refresh
21:21:45 19 your recollection as to what the focus of the product
21:21:49 20 was on -- as of April 25th, 2005?

21:21:55 21 A. No. Not more than what it says here.

21:21:58 22 Q. Well, do you have any reason to think that's
21:22:02 23 not the case?

21:22:03 24 A. No.

21:22:11 25 Q. Something I forgot to ask earlier.

21:22:13 1 What's -- what's the relevance of referencing
21:22:17 2 10 to 100 employees? Why is the number of employees
21:22:21 3 relevant?

21:22:22 4 A. Versus number of concurrent users?

21:22:25 5 Q. Right.

21:22:32 6 A. Technically, the only thing that matters is
21:22:35 7 concurrent users. It's easier when you speak to a --
21:22:38 8 to a prospect or a partner to -- I mean, they wouldn't
21:22:43 9 know what the number of users would be off the top
21:22:46 10 of their heads. They would know what the size of the
21:22:48 11 company is. So -- so it's easier to talk about the
21:22:52 12 number of employees and somehow deduct out of it what
21:22:56 13 would be the usage.

21:23:00 14 Q. Well, at some point in these SAP marketing
21:23:04 15 literature, it started referencing the number of
21:23:07 16 concurrent users and -- as well as the range of
21:23:10 17 employees.

21:23:11 18 A. Uh-huh.

21:23:11 19 Q. And so my question to you is: Why -- why
21:23:14 20 that distinction started to be made?

21:23:18 21 A. I don't remember the reason. I can only
21:23:20 22 imagine that it was because "number of employees" is
21:23:23 23 a very -- is an approximation. Because, you know, a
21:23:28 24 company could have 200 employees and only two users
21:23:31 25 or 200 employees and 150 users. And, obviously, the

21:23:37 1 performance and -- and the fit would be -- would be
21:23:40 2 different.

21:23:40 3 So -- so I assume that was the reason. They
21:23:44 4 wanted to have more -- a more precise metric versus
21:23:48 5 the number of employees, which is a far -- a far away
21:23:52 6 approximation.

21:23:55 7 Q. So we can deduce from the statement we just
21:23:58 8 read that SAP Business One is focusing on the needs
21:24:01 9 of businesses with 10 to 100 use -- with 10 to 100
21:24:05 10 employees, that they were focusing on businesses with
21:24:10 11 even a less number -- less number of users; correct?

21:24:15 12 A. Equal or less, I would say. But if you read
21:24:18 13 the next line, it says here that the focus would be 10
21:24:22 14 to 100 but continues to meet the needs of many larger
21:24:27 15 businesses up to 250 employees.

21:24:29 16 So -- so, obviously, from there you can say
21:24:31 17 that, depending on the ratio you want to use, that
21:24:35 18 there can be much more than the number you've mentioned.

21:24:47 19 Q. Okay. Can you turn to 129?

21:24:50 20 A. One --

21:24:51 21 Q. Exhibit 129. I'm sorry.

21:25:01 22 A. (Examining.) Yeah.

21:25:03 23 Q. This is a Business One "Statement of
21:25:05 24 Direction" for 2006.

21:25:08 25 First of all, do you have any understanding

21:25:11 1 of how these documents were generated and published?

21:25:19 2 A. No. I think, as I said before, it was either
21:25:24 3 coming from solution marketing --

21:25:28 4 (Court reporter clarification.)

21:25:30 5 THE WITNESS: -- solution marketing or from
21:25:30 6 the partners or a channel organization within SAP.

21:25:34 7 I don't -- but I don't know.

21:25:35 8 Q. BY MR. LAMBERT: Okay. Can you review -- can
21:25:39 9 you turn to page 19? There's a page called "Project
21:25:46 10 Team."

21:25:47 11 A. Hold on. "Project Team." Yes.

21:25:54 12 Q. There's a document owner and author and a
21:25:57 13 reviewer?

21:25:58 14 A. Uh-huh.

21:25:58 15 Q. And you're listed as one of the reviewers?

21:26:02 16 A. Uh-huh.

21:26:07 17 Q. Does that refresh your recollect --
21:26:08 18 recollection as to whether you reviewed this document?

21:26:11 19 A. No, it doesn't. It just says that -- it says
21:26:15 20 here that I was. No, I don't recall reviewing this.

21:26:18 21 Q. Do you have any reason to think that that
21:26:21 22 information's false?

21:26:23 23 A. No. I don't have a reason. Although, you
21:26:25 24 know, it's -- I -- I -- I assume it's a standard thing
21:26:30 25 that it -- my position, Gadi's position, we -- we were

21:26:34 1 supposed to review these things. But I don't -- but no,
21:26:37 2 I don't.

21:26:40 3 Q. Can you turn to page 7?

21:26:44 4 A. Uh-huh. Page 7.

21:26:46 5 Q. There's a -- there's a -- it's called:

21:26:49 6 "Summary. SAP Business One Positioning."

21:27:00 7 A. Yes.

21:27:03 8 Q. I guess a more basic question, this -- the
21:27:06 9 first page of this document reveals it was published
21:27:09 10 on March -- in March 2006.

21:27:13 11 That being the case, when would the
21:27:16 12 information necessary to publish this document have
21:27:20 13 been compiled?

21:27:23 14 A. I have no -- no knowledge of that. I don't
21:27:26 15 know.

21:27:29 16 Q. Well, are these -- are these documents
21:27:31 17 compiled or -- or based upon information that are
21:27:34 18 compiled over the course of the previous year?

21:27:38 19 A. I don't know. As I said, I don't know.

21:27:41 20 Q. Okay. Turning back to page 7 --

21:27:45 21 A. Uh-huh.

21:27:45 22 Q. -- there -- there's two columns. I'm -- I'm
21:27:51 23 referencing the second paragraph in the left-hand --
21:27:55 24 left-side column. It starts:

21:27:58 25 "While SAP Business One has many satisfied

21:28:01 1 larger customers, it is ideally suited for companies
21:28:05 2 with 10 to 100 employees."

21:28:07 3 A. Uh-huh.

21:28:09 4 Q. And then it ends with the sentence:

21:28:11 5 "SAP Business One is optimized for performance
21:28:14 6 with up to 50 concurrent users."

21:28:16 7 Do you see that?

21:28:17 8 A. Uh-huh. I do.

21:28:19 9 Q. Is that your understanding of where Business
21:28:23 10 One was positioned as of March 2006?

21:28:28 11 A. Yeah. That's what it says here.

21:28:32 12 THE VIDEOGRAPHER: Excuse me, Counsel. We
21:28:33 13 have --

21:28:34 14 Q. BY MR. LAMBERT: Do you disagree with that?

21:28:36 15 A. I -- since I don't recall the actual numbers,
21:28:39 16 I -- I have no reason to disagree or -- or agree. I
21:28:44 17 don't know. But that's what it says here.

21:28:47 18 THE VIDEOGRAPHER: Counsel, we have four
21:28:48 19 minutes left on the tape.

21:28:52 20 Q. BY MR. LAMBERT: In the right-hand column,
21:28:52 21 down at the bottom, it says:

21:28:55 22 "Our experience shows."

21:28:56 23 Do you see that --

21:28:57 24 A. Yes.

21:28:57 25 Q. -- paragraph?

21:28:58 1 A. Yes.

21:28:59 2 Q. Do you know what experience -- do you know
21:29:00 3 what experience that's based upon?

21:29:02 4 A. No, I don't.

21:29:12 5 Q. And then it lists a series of customer
21:29:17 6 profiles that would be suitable for Business One.

21:29:21 7 Do you see that?

21:29:22 8 A. Uh-huh. Yes.

21:29:23 9 Q. One of them is:

21:29:24 10 "Moderate customization requirements."

21:29:27 11 A. Correct.

21:29:33 12 Q. And:

21:29:34 13 "10 to 100 employees."

21:29:40 14 A. Uh-huh.

21:29:42 15 Q. Correct?

21:29:43 16 A. With the footnote that it's not a most
21:29:48 17 predictive indicator, yes.

21:30:04 18 Q. All right. Let's switch the tape. I think
21:30:06 19 we're almost done here, but let's switch it just to
21:30:09 20 be safe.

21:30:10 21 A. Okay. We probably have to be done no later
21:30:14 22 than half an hour.

21:30:16 23 THE VIDEOGRAPHER: This is the end --

21:30:17 24 MR. LAMBERT: Okay.

21:30:17 25 THE VIDEOGRAPHER: This is the end of Tape

21:30:18 1 No. 4 in the video deposition of Udi Ziv. Going off
21:30:22 2 the record. The time is 9:29.

21:30:25 3 (Recess from 9:29 p.m. to 9:33 p.m.)

21:34:25 4 THE VIDEOGRAPHER: This is the beginning of
21:34:26 5 Tape No. -- No. 5 in the video deposition of Udi Ziv.
21:34:30 6 Going back on the record. The time is 9:33.

21:34:42 7 Q. BY MR. LAMBERT: Good evening, Mr. Ziv. I'll
21:34:43 8 try to wrap this up shortly. But I want to go through
21:34:46 9 a few more things with you.

21:34:47 10 If you could turn to Exhibit 130.

21:34:54 11 A. 130. Oh, a big one. Okay. Yeah.

21:35:00 12 Q. Have you ever seen this document before?

21:35:03 13 A. (Examining.) I don't remember.

21:35:06 14 Q. Gadi Shamia reported to you; correct?

21:35:15 15 A. Yes.

21:35:15 16 Q. Would he have -- did he report directly to
21:35:18 17 you or through somebody else to you?

21:35:21 18 A. No. Directly to me.

21:35:23 19 Q. Would he -- would you have reviewed these
21:35:25 20 slides before he gave this presentation?

21:35:30 21 A. I may have, but not necessarily.

21:35:36 22 Q. And if you see down in the lower left-hand
21:35:38 23 corner, this is from the SAP Partner Tech Summit 2005.

21:35:46 24 A. Yeah. That's what it says.

21:36:13 25 Q. Turn to 119.

21:36:17 1 A. Turn to what? Sorry.

21:36:20 2 Q. I'm sorry. Exhibit 119.

21:36:22 3 A. Aah, okay. We're done with this.

21:36:29 4 (Examining.) Okay.

21:36:40 5 Q. Exhibit 119 is a set of PowerPoint slides

21:36:45 6 titled:

21:36:45 7 "Sizing Transaction Volumes," dated July 17,

21:36:45 8 2006.

21:36:47 9 A. Uh-huh.

21:36:50 10 Q. Do you recall ever seeing this document?

21:36:51 11 A. I don't.

21:36:54 12 Q. Do you know who Eric Moreau is?

21:36:58 13 A. No, I don't.

21:37:02 14 Q. Turn to Slide 3 --

21:37:06 15 A. Yes.

21:37:07 16 Q. -- titled:

21:37:07 17 History of business --

21:37:09 18 "History of Business One Deal Sizes."

21:37:12 19 A. Uh-huh.

21:37:13 20 Q. It states the average deal size and number

21:37:16 21 of users as 15.

21:37:17 22 A. Uh-huh.

21:37:18 23 Q. Do you see that?

21:37:19 24 A. Yes.

21:37:23 25 Q. Is that your recollection as -- as the --

21:37:26 1 to the average deal size for Business One software?

21:37:30 2 A. No. I don't recall the number.

21:37:41 3 Q. Turn to slide -- it looks like it's 9. Yeah.

21:37:48 4 Slide 9:

21:37:50 5 "Customer Profiles Definition."

21:37:53 6 It's a table.

21:37:54 7 A. Uh-huh.

21:37:58 8 Q. Are these testing results?

21:38:03 9 A. I don't know. It doesn't say here.

21:38:12 10 Q. Well, is it your recollection that the testing
21:38:15 11 results referred to the high end of simulated users as
21:38:21 12 30?

21:38:21 13 A. No. Actually, I don't think it says -- just
21:38:22 14 reading this, I don't think that that's the result.

21:38:23 15 I think it's defining two types of maybe testing
21:38:28 16 scenarios, but not -- definitely not the results.

21:38:31 17 Q. Well, can you turn to the previous page?
21:38:35 18 Maybe that will help us out.

21:38:41 19 A. Uh-huh.

21:38:42 20 Q. It lists two customer profiles?

21:38:45 21 A. Uh-huh.

21:38:49 22 Q. And it refers to:

21:38:50 23 "Typical profile stands for an average B1
21:38:53 24 customer."

21:38:54 25 "High end...stands for a mid to large B1

21:38:57 1 customer." (As read.)

21:38:58 2 A. Yeah. As I -- as I said, this is two profiles

21:39:00 3 for testing, not -- not the results themselves. Yeah.

21:39:03 4 Okay.

21:39:13 5 Q. What about the next slide?

21:39:17 6 A. Slide 10?

21:39:19 7 Q. Yes.

21:39:23 8 A. What about it?

21:39:25 9 Q. Are those the results?

21:39:31 10 A. There are a few actions, very discrete

21:39:34 11 actions here, I mean, out of dozens, if not hundreds,

21:39:40 12 of different things that the prod -- no -- definitely

21:39:43 13 hundreds, if not thousands, of different things the

21:39:46 14 product was doing.

21:39:47 15 It says -- yeah, it says here adding different

21:39:49 16 marketing documents with five items took between two

21:39:53 17 in a typical profile and eight seconds in a high-end

21:39:57 18 profile. Yeah. So this is, again, very specific and --

21:40:02 19 and small amount of testing data.

21:40:07 20 Q. Okay. And can you turn to Slide 12?

21:40:10 21 A. Uh-huh.

21:40:14 22 Q. Under "Disclaimers":

21:40:15 23 "Exceeding the typical data configuration

21:40:18 24 can result in performance degradation."

21:40:21 25 A. Uh-huh.

21:40:22 1 Q. Do you see that?

21:40:22 2 A. Yeah.

21:40:24 3 Q. Would you say -- based upon the numbers we
21:40:26 4 reviewed for Hodel previously, would you say that
21:40:29 5 they exceeded a typical data configuration?

21:40:33 6 A. I don't know. I -- I don't remember the
21:40:34 7 exact usage. So I don't know.

21:40:43 8 Q. Well, we reviewed the numbers a little bit
21:40:47 9 ago. I can tell you what they were again if you want
21:40:50 10 me to.

21:40:53 11 A. Yeah. Go ahead.

21:41:21 12 Q. 150- SKUs [sic]. 20,000 customers. 7,500
21:41:24 13 vendors.

21:41:29 14 A. Yeah. It -- it -- nothing in this document
21:41:35 15 I'm reviewing now is relating to that. So I -- it's --
21:41:39 16 it's impossible to correlate it to the -- the -- the
21:41:42 17 numbers you just gave me and the information in this
21:41:45 18 document.

21:41:49 19 Q. Well, I can tell you that I deposed Eddie
21:41:52 20 Neveux, who was a solution architect with SAP. And
21:41:57 21 he's told me that, on Slide 9, the item number would
21:42:04 22 correspond to the 150,000 SKUs.

21:42:08 23 Do you have any reason to disagree with that?

21:42:11 24 A. It seems reasonable.

21:42:15 25 Q. So would you say that that's not the typical

21:42:18 1 data configuration, that the high end for SKUs is 60,000
21:42:19 2 and Hodell had 150,000?

21:42:25 3 A. I think what it says here -- before, it
21:42:26 4 was the mid to high-end. But yeah, I mean, it's --
21:42:28 5 whatever the scenario for this test was, 60,000,
21:42:32 6 and this was considered mid to high-end. Obviously,
21:42:35 7 150,000 is more than 60,000. It still doesn't mean
21:42:39 8 that it doesn't work.

21:42:40 9 Q. It's almost --

21:42:41 10 A. Yeah, it's more than double. But -- two and
21:42:44 11 a half times to be accurate. But -- but again, it's
21:42:48 12 one parameter.

21:42:49 13 And -- and it doesn't say here -- I mean,
21:42:51 14 the only disclaimer that it says here on -- on page 12
21:42:55 15 that you referred me to is about adding marketing
21:43:00 16 document -- as an example, adding marketing document
21:43:01 17 more than 100 lines. So it doesn't say anything about
21:43:05 18 additional items or anything of that nature.

21:43:09 19 Q. What about the next bullet point:

21:43:12 20 "Combinations of large number of warehouses,
21:43:14 21 large amount of items, and large number of price lists
21:43:18 22 can result in performance degradation."

21:43:22 23 A. Uh-huh. Yeah.

21:43:23 24 Q. Based upon the information you reviewed about
21:43:26 25 Hodell, wouldn't you agree that that fits Hodell's

21:43:30 1 profile?

21:43:30 2 A. I -- you know, it says here a combination
21:43:34 3 of several things that can result. And from -- at
21:43:39 4 least, again, from my recollection, what you pointed
21:43:44 5 out was -- the only thing you pointed out that was
21:43:47 6 relevant is the large number of items. So I don't
21:43:51 7 know what the number of warehouses was or the price
21:43:56 8 lists. And I don't actually know what the formula --
21:43:58 9 combination formula here that would -- that can result
21:44:01 10 in a form of degradation.

21:44:06 11 Q. Well, I deposed Eddie Neveux, like I said,
21:44:08 12 and he told me that the line for accounts on Slide 9
21:44:15 13 would correspond to the combination of customers and
21:44:19 14 vendors for Hodell, which is two -- 27,500.

21:44:28 15 Do you have any reason to disagree with that?

21:44:31 16 A. No. I don't recall that this is the case.
21:44:32 17 But, I mean, I -- I assume he knows what he's talking
21:44:37 18 about. But I have no knowledge of that.

21:44:42 19 Q. Well, 27,500 is well in excess of 300 [sic];
21:44:46 20 correct? Or 3,000? I'm sorry.

21:44:49 21 A. 3,000. Yeah. It's even in excess of 3,000.
21:44:51 22 Yeah. But, again, I don't know that this is -- this
21:44:54 23 is the right comparison here.

21:44:58 24 And again, you know, the only thing it says
21:45:01 25 here is two testing scenarios. One was considered

21:45:06 1 typical and the other was considered mid to high-end.

21:45:06 2 And so I don't know what else we can deduct from this.

21:45:49 3 MR. LAMBERT: Okay. Let's go off the record.

21:45:51 4 I think I might be finished. I just want to make --

21:45:56 5 make sure.

21:45:57 6 THE VIDEOGRAPHER: Going off the record at

21:45:59 7 9:45.

21:46:00 8 (Recess from 9:45 p.m. to 9:46 p.m.)

21:47:00 9 THE VIDEOGRAPHER: Back on the record at 9:46.

21:47:06 10 Q. BY MR. LAMBERT: Mr. Ziv, do you have

21:47:06 11 any recollection of an issue of -- with regard to

21:47:09 12 implementation of SAP Business One at a company by

21:47:12 13 the name of Weidmueller?

21:47:17 14 A. No, I don't.

21:47:19 15 Q. You have no recollection whatsoever of that

21:47:21 16 installation?

21:47:22 17 A. No.

21:47:22 18 MR. LAMBERT: Okay. I don't have anything

21:47:27 19 further. Thanks for your time. I know it's late. The

21:47:31 20 other side's lawyer might have a couple of questions,

21:47:39 21 but I'm -- I'm finished.

21:47:57 22

21:48:01 23 EXAMINATION

21:48:01 24 BY MR. HULME:

21:48:04 25 Q. Mr. Ziv, I represent LSI, the general partner

21:48:08 1 in this case.

21:48:10 2 First question I have is: You said you were
21:48:13 3 one of three groups that reported to the board directly.

21:48:16 4 Who were the other two groups?

21:48:19 5 A. I don't think I said that. Remind me what
21:48:22 6 I said. Three groups reporting to the board? You may
21:48:26 7 have confused this --

21:48:27 8 Q. I'm sorry.

21:48:28 9 A. Go ahead.

21:48:28 10 Q. All right. You reported directly -- you
21:48:31 11 reported directly to the board of directors; correct?

21:48:34 12 A. Yes. I reported to Shai Agassi, who was a
21:48:39 13 member of the board of directors. Yes.

21:48:42 14 Q. Okay. And you were head of the small business
21:48:45 15 group; is that correct?

21:48:47 16 A. Small Business Solutions group, yeah, or PTU
21:48:47 17 as it was called, product and technology unit.

21:48:53 18 Q. What other groups were there at SAP?

21:49:03 19 A. Wow. Let's see. Shai -- Shai Agassi's
21:49:07 20 organization was called PTG, product and technology
21:49:10 21 group. Under Shai were different PTUs, product and
21:49:12 22 technology units, which I was one of them, actually
21:49:17 23 a small one of them. And then there were other groups,
21:49:21 24 similar groups for sales that were managed by another
21:49:27 25 board member and a different group for services that

21:49:32 1 was managed by another board member, et cetera. I
21:49:35 2 don't remember the -- the full org chart.

21:49:39 3 Q. Okay. All right. You -- you said, through
21:49:41 4 the entire time you were with SAP, you were targeting
21:49:44 5 the small mark -- small business market; correct?

21:49:47 6 A. No. Actually, I started working for the
21:49:52 7 small market [sic] sometime in 2004 -- I don't remember
21:49:55 8 exactly when -- in parallel to my other role of running
21:50:00 9 the SAP lab in Israel.

21:50:03 10 Q. All right. Compare for me what other markets
21:50:07 11 were there besides the small market -- small business
21:50:11 12 market in 2004?

21:50:14 13 A. I don't remember the split in 2004. I can
21:50:18 14 answer generically if you want. Sometime in -- in --

21:50:20 15 Q. Generically, yeah.

21:50:21 16 A. Yeah. It was large enterprise, mid-market,
21:50:27 17 and small businesses, so actually three segments. And
21:50:33 18 then --

21:50:33 19 Q. Okay.

21:50:34 20 A. -- through this, we -- it was referred to
21:50:36 21 in one of the documents -- we divided the small into
21:50:39 22 small and very small.

21:50:43 23 Q. And how was the small broken up from the
21:50:47 24 mid-market?

21:50:50 25 A. As I said much earlier today, I don't remember

21:50:54 1 the exact criteria that was kind of the boundaries of
21:50:58 2 each one of those. But there were some criteria of a,
21:51:03 3 you know, typical boundary between the two, small and
21:51:09 4 mid -- midsize. And as I said earlier, there was also
21:51:12 5 an overlap between them to ensure that, whatever the
21:51:16 6 situation, we have the right product for it.

21:51:18 7 Q. Yeah. And I'm not going to hold you to it.

21:51:21 8 But give me typically what -- what you would
21:51:24 9 consider small and what you would consider medium or
21:51:27 10 mid?

21:51:27 11 A. You know, there is -- there's no typical.
21:51:29 12 I don't know remember what -- what we considered that
21:51:33 13 in the past. And so anything I would say would be a
21:51:39 14 guess only. And I don't think it's appropriate.

21:51:42 15 Q. Well, how long were you in charge of the --
21:51:45 16 the small market?

21:51:46 17 A. About three years.

21:51:49 18 Q. And in that three years, you didn't gain any
21:51:52 19 knowledge as to a general rule of thumb as to what would
21:51:54 20 be considered a small market customer?

21:51:57 21 A. I didn't say that. I said I don't recall.

21:51:59 22 Q. All right. And have you had any medical
21:52:04 23 conditions or anything happen in your life that has
21:52:07 24 affected your ability to recall things or events?

21:52:11 25 A. Not that I know of.

21:52:12 1 Q. I'm not being smart. I just -- sometimes
21:52:14 2 it happens. I just --

21:52:17 3 A. No.

21:52:17 4 Q. No auto accidents?

21:52:19 5 A. No.

21:52:19 6 Q. Okay. This is just the passage of time is
21:52:21 7 the problem you have with memory?

21:52:25 8 A. Probably.

21:52:26 9 Q. Okay. Would you go to Exhibit 69, please?
21:52:32 10 That's your internal e-mail chain.

21:52:40 11 A. Is it here already? Have -- have we reviewed
21:52:41 12 it already?

21:52:42 13 Q. Yes.

21:52:43 14 A. Okay.

21:52:43 15 Q. Yes, you have.

21:52:44 16 A. Okay. I'm looking.

21:52:51 17 MR. GAMULKA: It's not a blue one.

21:52:56 18 THE WITNESS: Yeah, I know. I know. We'll
21:52:59 19 find it.

21:53:00 20 Sixty-nine, you said?

21:53:02 21 Q. BY MR. HULME: If you see seven -- if you
21:53:03 22 see 70, hold it out also.

21:53:05 23 A. Here is 69. I don't think I've --

21:53:08 24 MR. GAMULKA: I have 70.

21:53:10 25 THE WITNESS: You have 70? Okay. So yes,

21:53:10 1 we have both. Which one?

21:53:13 2 Q. BY MR. HULME: Okay. Sixty-nine. I'm
21:53:16 3 looking at your response to -- that you sent to Dan
21:53:23 4 Kraus April 12 at 2:51 p.m.

21:53:27 5 A. (Examining.)

21:53:32 6 Q. Were the statements you made in that e-mail
21:53:35 7 to Dan Kraus obvious to you based upon the information
21:53:40 8 that had been communicated to you by Dan Kraus and Dan
21:53:44 9 Lowery?

21:53:46 10 A. You're asking if it was obvious? I don't
21:53:50 11 know what -- I don't know what was obvious and not.
21:53:54 12 I mean, I can read what I wrote. But I don't know
21:53:58 13 what was obvious and what wasn't.

21:54:00 14 Q. Well, more likely than that, did you do any
21:54:03 15 independent investigation or research in preparation
21:54:06 16 of writing this e-mail?

21:54:08 17 A. I don't remember. I -- I doubt I wrote
21:54:10 18 it without addressing some other people in the
21:54:13 19 organization, because these are usually things I
21:54:16 20 wouldn't be dealing with directly. But I don't know.

21:54:20 21 Q. More likely than not, who would you have
21:54:24 22 talked to?

21:54:26 23 A. Most probably, at least Dirk Boessmann, who's
21:54:31 24 copied on this e-mail. He was, as I said before, in
21:54:32 25 charge of the IBD, install base development, which --

21:54:34 1 so under his responsibility was all current customers
21:54:40 2 using current products.

21:54:54 3 Q. What would be the sane B1 sweet spot?

21:55:00 4 A. I don't know.

21:55:04 5 Q. All you know is that 120 users is way above
21:55:08 6 any sane B1 sweet spot?

21:55:10 7 A. As I said before, I think 120 is just one
21:55:14 8 item out of a few that -- in the context of this
21:55:16 9 specific implementation that made it outside the
21:55:19 10 sweet spot.

21:55:22 11 Q. Were the number of users that -- that --
21:55:24 12 Business One over the years, between 2004 and 2007,
21:55:30 13 did it -- did it -- were its capabilities expanded
21:55:36 14 so that it could accommodate more users in 2007 and
21:55:39 15 back in 2004?

21:55:44 16 A. The capabilities were definitely expanded.
21:55:46 17 I don't know if direct -- if it affected directly the
21:55:50 18 number of users, again, depending on the scenarios,
21:55:50 19 et cetera. So I don't -- I don't have a clear answer
21:55:53 20 to that.

21:55:55 21 Q. Okay. And what about the data set value,
21:55:58 22 do you have an opinion or a recollection as to whether
21:56:03 23 that 2004 version of B1 could handle more or less or
21:56:10 24 the same as of 2007?

21:56:16 25 A. No. I don't have any knowledge specifically.

21:56:18 1 I would say definitely not less. I assume more. But
21:56:22 2 I don't have, you know, clear facts to back it up.

21:56:25 3 Q. Okay. But un -- unequivocally, as of
21:56:29 4 April 12th, 2007, you were of the opinion, based
21:56:33 5 upon the information you had, that the B1 product
21:56:38 6 in 2007 was inappropriate for this customer; is that
21:56:41 7 correct?

21:56:44 8 A. No. I -- I think what I said is that, given
21:56:48 9 the information I had, which included many things, like
21:56:54 10 the number of users and others, it was definitely not
21:56:59 11 the -- the -- the focus area or the sweet spot of --
21:57:00 12 of the product. It doesn't say it's not a fit. But
21:57:06 13 it's definitely not the -- in the -- the center of
21:57:06 14 the bulls-eye.

21:57:09 15 Q. But you don't have any recollection of what
21:57:11 16 information you had other than these e-mails --

21:57:14 17 A. No.

21:57:15 18 Q. -- correct?

21:57:16 19 A. No, I don't. I don't.

21:57:18 20 Q. Okay. Exhibit 70 now.

21:57:20 21 A. Uh-huh.

21:57:21 22 Q. It's the e-mail that you actually sent to
21:57:25 23 Dan Lowery in response to his inquiry --

21:57:27 24 A. Uh-huh.

21:57:28 25 Q. -- April 13, 11:40 a.m.

21:57:32 1 A. Yeah, yeah. I see it.

21:57:33 2 Q. You start with: "Dan."

21:57:33 3 You see it?

21:57:35 4 A. Yes.

21:57:35 5 Q. (Reading.)

21:57:36 6 "Dan, as you know" --

21:57:42 7 Where did you get the information that Dan

21:57:44 8 knew that this customer's environment is far outside

21:57:48 9 the sweet spot of Business One?

21:57:50 10 A. I -- I have no clue. I don't know. I don't

21:57:52 11 remember if this was something I was told or something

21:57:56 12 I assumed. I don't know. I don't know.

21:58:00 13 Q. Okay. Do you have -- today, as you sit here,

21:58:02 14 do you have any foundation or basis for making that

21:58:06 15 statement that you can relate to us?

21:58:08 16 A. No.

21:58:19 17 Q. In your opinion, in 2004, 2005, would it

21:58:24 18 have been sane to market this product to a company

21:58:30 19 with 500 users and \$100 million in revenue?

21:58:37 20 A. As I said, it's a -- it's a hypothetical

21:58:40 21 question. Depending on what the company is planning

21:58:42 22 on doing with the product, that could be sane or that

21:58:47 23 could be completely not sane or not recommended is --

21:58:48 24 is a better term. So --

21:58:51 25 Q. And marketing it to a company with

21:58:53 1 \$100 million in revenue and 250 users could be
21:58:57 2 sane or insane depending upon the circumstances?

21:59:01 3 A. Could be recommended or not recommended,
21:59:03 4 depending on the circumstances. Yes.

21:59:05 5 Q. Do you know when SAP Business ByDesign was
21:59:08 6 first put on the market?

21:59:11 7 A. No, I don't.

21:59:14 8 Q. Are you familiar with that product at all?

21:59:16 9 A. Yes.

21:59:18 10 Q. And how did you gain familiarity with that?

21:59:21 11 A. That product was in development during my
21:59:24 12 time with SAP. So, yeah, that's -- that's about all
21:59:30 13 I know about it. I don't know if -- I don't recall
21:59:34 14 if --

21:59:34 15 Q. Did -- did that --

21:59:35 16 A. Go ahead.

21:59:36 17 Q. Did that fall within your department?

21:59:39 18 A. No, it did not.

21:59:43 19 Q. In whose department or group did that fall
21:59:47 20 within?

21:59:48 21 A. At the time that I was there, it reported to
21:59:53 22 a different board member. His name was Peter Zencke.
21:59:56 23 Z-e-n-c-k-e, I think. So it wasn't even in -- in --
22:00:04 24 part of Shai Agassi's organization, which is -- was
22:00:08 25 a different board member.

22:00:10 1 Q. So was it in the mid-market or large
22:00:13 2 enterprise, or did it fall within any one of those
22:00:18 3 business groups?

22:00:18 4 A. As far as I recall, it was targeting the
22:00:21 5 mid-market.

22:00:27 6 Q. Would you go to Tab 11, which is -- it's
22:00:34 7 Exhibit 242.

22:00:39 8 A. I have it already?

22:00:40 9 MR. GAMULKA: Yeah. A blue one.

22:00:42 10 THE WITNESS: A blue 242. Okay.

22:00:50 11 Q. BY MR. HULME: It was Tab 11, Exhibit 242.

22:00:55 12 A. Okay. Searching.

22:00:57 13 Q. Page --

22:00:58 14 A. Hold on. Hold on. Hold on.

22:01:06 15 244, 243 -- oh, it's in order. Yeah, 242.

22:01:15 16 Q. I'm trying to get a -- a time frame that this
22:01:17 17 more likely than not was produced. So look at page 2 --

22:01:23 18 A. Uh-huh.

22:01:23 19 Q. -- and then page 19.

22:01:32 20 A. Uh-huh.

22:01:34 21 Q. Page 19 references the product summit meeting
22:01:38 22 to be held January 10th, 11th in Miami.

22:01:42 23 A. Uh-huh.

22:01:42 24 Q. And they're going to talk about the overall
22:01:45 25 two thou -- 2005 planning.

22:01:48 1 A. Uh-huh.

22:01:48 2 Q. My question is: Do you have a ballpark idea
22:01:51 3 when this document would have been produced?

22:01:58 4 A. It's only a guess. But I assume it was the
22:02:02 5 last or -- quarter or the last few months of 2004. But
22:02:10 6 it's only a guess.

22:02:12 7 Q. Okay. And then more likely than not, that
22:02:17 8 January 10th, 11th in Miami would have been in January
22:02:21 9 of 2005?

22:02:22 10 A. I assume so.

22:02:23 11 Q. Probably?

22:02:24 12 A. Yes.

22:02:31 13 Q. Would you go to Tab 13, which is Exhibit 246?

22:02:37 14 A. Uh-huh. Yeah, got it.

22:02:48 15 Q. All right. The first page of it, Ralf
22:02:57 16 Mehnert-Meland's April 16th e-mail at 5:46 p.m. --

22:03:01 17 A. Uh-huh.

22:03:02 18 Q. -- you're talk -- he was talking about
22:03:05 19 the two problems. One was accessing the SAP Business
22:03:08 20 One and two was the performance degrades with large
22:03:13 21 databases.

22:03:14 22 Is my understanding correct that the point
22:03:17 23 No. 1, the add-on products accessing SAP Business One,
22:03:21 24 that's the DI API issue?

22:03:29 25 A. I don't remember.

22:03:30 1 Q. Okay. The point that --

22:03:36 2 A. I don't remember.

22:03:37 3 Q. You don't remember?

22:03:39 4 A. No.

22:03:39 5 Q. Do you remember that being the issue with
22:03:42 6 a Business One product, the DI API?

22:03:49 7 A. No. I don't know.

22:03:54 8 Q. Point No. 2, performance degrades with large
22:03:57 9 data sets, that was a problem with the B1 program
22:04:01 10 itself; is that correct?

22:04:07 11 A. Well, I think Ralf's assumption is that there
22:04:10 12 was a problem with the large data set. And I assume
22:04:12 13 it's in Business One itself. Yes.

22:04:16 14 Q. Okay. Are you a code writer or a programmer?

22:04:22 15 A. I used to be many years ago. Yes.

22:04:24 16 Q. All right. When was the last time you were
22:04:27 17 a programmer?

22:04:34 18 A. Probably 1996 or '5 or something like that.

22:04:42 19 Q. Did you do any programming on the predecessor
22:04:45 20 to Business One?

22:04:47 21 A. I may have. I don't recall. And as I said,
22:04:51 22 in the original days, we shared some code between
22:04:54 23 different products in the time of the Quick Soft days.
22:04:59 24 In that time, there may be some code that was shared
22:05:01 25 with Business One, what -- what became later to be

22:05:04 1 Business One.

22:05:48 2 Q. Do you have personal knowledge as to whether
22:05:50 3 any of the SAP documents that you reviewed today were
22:05:55 4 ever disseminated to the channel partners?

22:05:59 5 A. No. I don't have any specific knowledge.
22:06:02 6 I think there was one that was directed to a channel.
22:06:04 7 So I can only assume that was sent to the channel.
22:06:07 8 But on the others, I don't.

22:06:10 9 MR. HULME: I don't have any other questions.
22:06:27 10 Thank you.

22:06:27 11
22:06:27 12 EXAMINATION

22:06:27 13 BY MR. STAR:

22:06:30 14 Q. Mr. Ziv, I just have one follow-up question.
22:06:33 15 Who replaced you when you left at SAP as
22:06:36 16 head of the small business division?

22:06:43 17 A. As far as I know -- I'm not -- I'm not
22:06:46 18 100 percent sure it was kept the same way. I think
22:06:48 19 the -- the role was split into two, to several people.
22:06:52 20 I think one of them or the main one, I think, was a --
22:06:58 21 a gentleman by the name of Ami Heitner. But it's --
22:07:02 22 I'm not 100 percent sure.

22:07:07 23 Q. Do you know how to spell his name?

22:07:09 24 A. Ami is A-m-i. And Heitner is H-e-i-t-n-e-r.

22:07:17 25 MR. STAR: Okay. Thank you.

FURTHER EXAMINATION

BY MR. HULME:

Q. I have two more questions.

The first is: Is there any theoretical limit on the number of users for the B1 program?

A. I don't recall.

Q. And would you agree that the B1 program, at least as represented by SAP, was infinitely scalable?

A. Infinitely scalable? I don't think that --

Q. Yes.

A. -- exists anywhere. So probably not.

Q. Okay. That's only a term that probably comes from the lips of salespeople?

MR. STAR: Object to the form.

Q. BY MR. HULME: Would you agree with that, that that phrase would only come from the lips of salespeople, not a programmer?

A. How would I know?

MR. STAR: Same objection.

THE WITNESS: I don't know.

MR. HULME: Thank you very much.

THE WITNESS: All right. Thank you.

THE VIDEOGRAPHER: This is the end of tape --

MR. STAR: We have no questions.

MR. HULME: I have no idea what you guys

just said.

MR. STAR: I said: We have no questions.

MR. HULME: Oh, thank you.

THE VIDEOGRAPHER: This is the end of Tape
No. 5 and the end of the video deposition of Udi Ziv.

Going off the record. The time is 10:07.

(The deposition concluded at 10:07 p.m.)

1 CERTIFICATE OF WITNESS/DEPONENT

2
3 I, UDI ZIV, witness herein, do hereby certify
4 and declare the within and foregoing transcription to
5 be my examination under oath in said action taken on
6 June 25, 2012, with the exception of the changes listed
7 on the errata sheet, if any;

8 That I have read, corrected, and do hereby
9 affix my signature under penalty of perjury to said
10 examination under oath.
11
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15 _____
16 UDI ZIV, Witness

Date

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JUNE 25, 2012 - UDI ZIV

CERTIFICATE OF REPORTER

I, BRENDA MATZOV, CA CSR No. 9243, do hereby
certify:

That, prior to being examined, the witness
named in the foregoing deposition was duly sworn by me
to testify the truth, the whole truth, and nothing but
the truth;

That the foregoing deposition was taken before
me at the time and place herein set forth, at which time
the aforesaid proceedings were stenographically recorded
by me and thereafter transcribed by me;

That the foregoing transcript, as typed, is a
true record of the said proceedings;

And I further certify that I am not interested
in the action.

Dated this 3rd day of July, 2012.

BRENDA MATZOV, CA CSR No. 9243

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ERRATA SHEET

*** HODELL-NATCO INDUSTRIES, INC. v.

SAP AMERICA, INC., et al. ***

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UDI ZIV, Witness

Date

JUNE 25, 2012 - UDI ZIV